72 Ap 19 Argued

April 20. Rule Refused Clifford.

6

SUPREME COURT OF THE UNITED STATES.

No. 12.—ORIGINAL.

EX PARTE: IN THE MATTER OF MAX. NEWMAN, A. MARTENS, J. KRUSE, H. LUETH, C. RIECKHOFF, A. SHROEBEKE, WILLIAM SPEITZ, AND ROBERT TARRECT, PETITIONERS.

PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES CIRCUIT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK.

FILED APRIL 5, 1872.

Clifford

SUPREME COURT OF THE UNITED STATES.

No. 12.—ORIGINAL.

EX PARTE: IN THE MATTER OF MAX. NEWMAN, A. MARTENS, J. KRUSE, H. LUETH, C. RIECKHOFF, A. SHROEBEKE, WILLIAM SPEITZ, AND ROBERT TARRECT, PETITIONERS.

PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES CIRCUIT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Notice of motion	1	1
Petition	3	1
Opinion, Benedict J	17	5
Opinion, Woodruff, circuit judge	47	14
PROCEEDINGS IN DISTRICT COURT.		
Libel	67	20
Answer	81	26
Testimony of Newman	89, 98	30, 35
Same	119, 188	45, 80
Same	197	84
Martens	96, 99	34, 36
Same	189, 190	80, 81
Same	196, 198	84, 85
Winans	96	34
Romer	104	38
Schrœder	105	39
Zach	106, 111	39, 42
Garret	110	41
Fischer	112, 118	42, 45
Same	119, 191	46, 81
Schwebtke	118, 136	45, 54
Schmidt	118	45
Kruse	120	46
Luett	124	48
Torreck	129	50
Speitz	131	51
Rieckhoff	134	52
Consul's requisition	142	56
Muster-roll	143	57
Book of navigation	151	62

	Original.	Print.
Assignment	160	66
Commitment and release	161	67
Exequatur	163	67
Certificate of Secretary of State	163	68
Complaint before consul	164	68
Consul's protest	168	70
Interlocutory decree	182	77
Final decree	202	87
Appeal	206	88

1 Supreme Court of the United States.

In the matter of the application of Max. Newman, Abraham Martens, Julius Kruse, Herman Lueth, Charles Rieckhoff, Albert Schroebeke, William Speitz, and Robert Tarrect, for a mandamus to be issued out of and under the seal of this court, to be directed to the Honorable Lewis B. Woodruff, circuit judge, holding the United States circuit court in the eastern district of New York, in and for the second circuit.

Please to take notice that, on the annexed petition, and on the decision of the Honorable Charles L. Benedict, district judge, and the decision of the Honorable Lewis B. Woodruff, circuit judge, copies of which are hereto annexed, and on the apostles in this cause also hereto annexed, we shall move this court at a stated term thereof, to be held at the capitol, in the city of Washington, D. C., on Friday, the twelfth (12th) day of April, 1872, at the opening of the court on that day,
2 or as soon thereafter as counsel can be heard, for an order that a writ of mandamus be issued out of and under the seal of this court, directed to the Honorable Lewis B. Woodruff, circuit judge, holding the United States circuit court in the eastern district of New York, in and for the second circuit, and to the said circuit court, commanding and directing him or the said circuit court to entertain jurisdiction of this said cause on appeal, and to hear and decide the same on the merits thereof, or for such other or further order or relief in the premises as to this court shall then and there seem meet.

Dated New York, March 13th, 1872.

Yours, &c.,

D. & T. McMAHON,
Proctors for Petitioners.

To SALOMON & BURKE, Esq'rs,
Proctors for Prussian Bark Elwine Kreplin, &c.

To the honorable the circuit court of the United States
for the eastern district of New York, in the second circuit.

3 Supreme Court of the United States.

In the matter of the application of Max. Newman, Abraham Martens, Julius Kruse, Hermann Luett, Charles Rieckhoff, Albert Schroebeke, William Speitz, and Robert Tarrect for a mandamus to be issued out of and under the seal of this court, to be directed to the Honorable Lewis B. Woodruff, circuit judge, holding the United States circuit court in the eastern district of New York, in and for the second circuit.

To the honorable the Supreme Court of the United States:

The petition of Max. Newman, Abraham Martens, Julius Kruse, Hermann Luett, Charles Rieckhoff, Albert Schroebeke, William Speitz, and Robert Tarrect, presented on their behalf by Dennis McMa-
4 hon, an attorney and counsellor of this court, respectfully showeth:

That on or about the 24th day of August, 1870, the above-named petitioner, Max. Newman, in his own behalf & as assignee of the other petioners, by D. &. T. McMahon, their proctors, filed in the district court of the United States held in and for the eastern district of New York, in the admiralty, their libel against The Prussian Bark "Elwine Krep-

lin," her tackle, &c., claiming to recover the amount due the above-named parties, who were Prussian subjects, for their wages as mariners on board of said vessel, and praying, amongst other things, and for the reasons in said libel stated, that the said district court would be pleased to pronounce for their said wages, and also to condemn the said vessel, her tackle, &c., and the parties intervening therein, for the said demand and for costs.

That process of attachment was therefor issued out of said district court, and the said bark, her tackle, &c., then in said district, were attached by the marshal in said district, under such process.

That thereupon Henry Fisher, master and part owner of the
5 said bark, appeared in said court, put in his claim, and gave the necessary security for the release of said vessel & her tackle, &c., and filed his answer, setting up, among other things, a want of jurisdiction in said court, and praying that, for the facts and reasons in said answer stated, said district court would be pleased to pronounce against said libel, and condemn the libellants in costs.

That the said cause came on to be heard before the Hon'ble Charles L. Benedict, judge of said district court, upon pleadings and proofs, and the said judge, having advised thereon, did, on or about the 21st of December, 1870, decide that the said Max. Newman recover the amount of wages due him from said vessel, and that the said other seamen above named recover their wages from the said vessel on performing the conditions stated in said decision.

That afterwards, such proceedings were had in the said cause that, on the 10th day of January, 1871, an order was made therein, by said judge, whereby the said Albert Schrebke, Hermann Luett, Abraham Martens, William Speitz, Robert Tarrect, Charles Rieckhoff, and Julius Kruse were made co-libellants with said Max. Newman, in the said cause.

That afterwards, on the 24th day of April, 1871, the said district judge made a final decree in said cause, whereby it was adjudged and decreed that the said several parties libellant and co-libellants recover in said cause the sum of $712 32, their wages, and their costs, which were taxed at $255 81. Upon which decree a summary judgment was afterwards entered against the principal and sureties, on the bond given on the discharge of the above vessel.

And your petitioners further show that subsequently an appeal was taken from the said final deeree, on or about the 27 day of April, 1871, to the circuit court of the United States held in and for the said district, and such appeal was duly perfected, on or about the 8th day of May, 1871, and such proceedings were had in the appellate court as that the cause was fully argued on the same pleadings and proofs in the said circuit court held before his honor Lewis B. Woodruff, cir-
7 cuit judge of the second circuit; and, after advisement, the said circuit judge, on or about the day of February, 1872, delivered his opinion, adjudging that the said libel should be dismissed for want of jurisdiction in the said district court of the United States, or in any court of the United States to entertain jurisdiction thereof, and thereupon delivered an opinion, a copy of which is hereto annexed, marked C, and for that reason refuses & declines to entertain said cause, & to consider the same on the merits.

That no final decree has been signed by the said circuit judge, or entered in the said circuit court on the said appeal, and the time in which to enter the same has been extended by stipulation until the 17th day of March, 1872.

That annexed hereto, marked A, is a printed copy of the apostles in the said circuit court, used on the said appeal, containing all the pleadings, proofs, and proceedings in the said cause in the said district & circuit courts, up to the argument in the said circuit court, to which your petitioners refer, and make as and for a part of this their petition.

8 That annexed hereto, marked "B," is a copy of the opinion of his honor C. L. Benedict, district judge for the eastern district, in the said cause in the court below, which opinion your petitioners also make as & for part of their petition.

Your petitioners further show to this honorable court, that the grounds of the refusal of the said circuit court to entertain jurisdicton of the said cause, and of its decision to reverse the judgment of the district court for want of jurisdiction of that court to entertain jurisdiction to hear and decide said cause on the merits, involve very grave questions of constitutional law. That the said circuit court as will appear by their opinion hereto annexed, marked "C," refuse to entertain jurisdiction of said cause, or to consider the same on the merits, because of article 10 of a commercial treaty entered into between the Government of the U. S. and the Kingdom of Prussia, in the year 1828, which provides that the consuls & commercial agents of the respective governments shall have the right, as such, to sit as judges & arbitrators in

9 such differences as may arise between the captains & crews of the vessels belonging to the nation whose interests are committed to their charge without interference of the local authorities, unless the conduct of the crews, or of the captains should disturb the order or tranquillity of the country, or the said consuls, vice consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect, or supported, and that because of that clause, this court has no jurisdiction of the said cause.

That your petitioners' counsel has examined the various commercial treaties between the Government of the United States and the following commercial nations of Europe, to wit:

With Portugal of 1840,	article	10	8	Stat. at Large		p.	564
With Hanover of 1840,	"	6	"	"	"	p.	556
With Greece of 1837,	"	12	"	"	"	"	504
With Russia of 1832,	"	8	"	"	"	"	352
With Sweden of 1827,	"	13	"	"	"	"	
" Austria of 1848,	"	4	9	"	"	"	154
" Hanover of 1846,	"		9	"	"	"	60–61
" Mecklenburg-Schwerin of 1846,			"	"	"	"	73
" United Sicilies of 1855,			11	"	"	"	650
" France of 1853,	art. 8		10	"	"	"	996
10 " Ven'zuela of 1860,	" 26		12	"	"	"	1157

With Dominican Republic, of 1867, art. 26, p. 181, 15 Stat. at Large. Kingdom of Italy of 1868, art. 11, p. 189, 15 Stat. at Large, p. 189.

And finds in these treaties similar or analogous stipulations on the same subject-matter, and unless said doctrine as laid down in the said circuit court be overturned, it will follow that much of the admiralty & maratime jurisdiction of the courts of the United States will be taken away from them, because of the said provisions of the said treaties, and your petitioners are advised that said doctrine is untenable for the following reasons, to wit:

Firstly. That the said treaty stipulations are unconstitutional & void, because that they strip the courts of the United States of the admiralty jurisdiction conferred on them by the Constitution of the U. S.

11 The Constitution of the United States, expressly provides that the United States courts shall have exclusive jurisdiction of all cases of admiralty & maratime jurisdiction. It was well settled at the time of the formation of said Constitution, & has been since that admiralty courts have jurisdiction at their discretion, over foreign vessels within their jurisdiction and actions in rem against them brought by foreign seamen. If, then, the treaty-making power of the U. S. Government, attempts to confer on a foreign power, or a foreign official exclusive jurisdiction of cases clearly within the purview of admiralty, they violate the above constitutional provision, and the said treaty provision would be null & void. If admiralty jurisdiction over suits by foreign seamen, can be bartered away by treaty to a foreign power, thereby creating a multitude of local jurisdictions within our territory, our national courts might, in the course of events, be stripped of an important part of its lawful jurisdiction. And the district court below in this cause exercised said discretion, and the circuit ct. had no right to review same.

12 Secondly. That the said article of the said treaty has no reference to suits or proceedings in rem, and in that respect differs decidedly from the case mentioned in the treaty of a dispute between the master & seamen.

In actions in rem, the admiralty acquires jurisdiction from the locus in rei sitæ, and its judgments, as in the analogous cases of a sale of a deceased's land by an orphan court, (2 How. 219,) or a foreclosure of a chattel-mortgage operate on the estate or vessel alone, & not on the heirs or owners. The proceeding is against the vessel, to foreclose a lien, and the owners are brought in incidentally. The master, as such, has no interest, nominal or otherwise, in the suit in question, and it is a misnomer to call the present case a controversey between a master & his crew.

Thirdly. In the case at bar, the facts shew that the said Prussian authorities refused to entertain jurisdiction of the matter in difference involved in this case, or if they did so, they made no adjudication

13 in the matter in difference & in controversy between the said libellants & the said master of the said vessel which would exclude the jurisdiction of the said district c't.

Fourth. That the alleged treaty and its stipulations are with the kingdom of Prussia. The tribunals referred to in the said treaty are the consuls, vice-consuls, and commercial agents of Prussia; that at the occurrence of the facts here in controversy, there were no consuls or vice-consuls, or commercial agents of the kingdom of Prussia, in the city of New York, or in the U. S.; but that there are of such officials of the North German Union. Such treaty stipulations to maintain such tribunals, independant of our own in this country, are contrary to the spirit of our institutions, as its effect may be to create in our midst many tribunals, independent of our national courts. Therefore such provisions should be be construed strictly. As there are now no Prussian consuls, we maintain that the North German Union do not come within the treaty, especially as we find among the treaties with our Govern-

14 ment, one with the North German Union, in which no provisions of the kind above referred to are contained.

Fifthly. That, as appears by the proofs in the cause, the said consul is estopped from asserting his exclusive jurisdiction, because that he appealed in his requisitions to our courts, (see folios 307 & 308 of ex'ct,) and prayed them to take cognisance of the cases. He cannot be permitted, after doing so, to avail himself of the benefit of said treaty stipu-

lations. That no appeal nor writ of error can be had to this court from said refusal of said circuit court to entertain jurisdiction of the said cause on the merits, because that the amount involved in said cause does not equal $2,000. For all which reasons your petitions submit that the said refusal of the said circuit court, held as aforesaid to entertain & decide the said appeal on the merits, because of the alleged want of jurisdiction aforesaid, in consequence of the treaty aforesaid, was erroneous & of great damage to your petitioners, who were left penni-
15 less in this foreign land, & that by reason of the said refusal of the said circuit court as aforesaid to entertain said jurisdiction, they are left without any remedy in what they are advised to be a proper & legal cause for the consideration of the said circuit court, unless by the writ of mandamus of this honorable court to be issued out of & under the seal thereof, & to be directed to the said the Honorable Lewis B. Woodruff, circuit judge, holding the said circuit court in & for the said eastern district of New York, & within the second circuit, commanding and directing him or the said circuit court to entertain jurisdiction of the said cause on appeal, and to hear & decide the same on the merits thereof. Wherefore your petitioners pray for the relief & writ of mandamus aforesaid, or for such other or further relief in the premises as to this honorable court may seem meet; and your petitioners will ever pray, &c.

DENNIS McMAHON,
Proctor & Counsel for Petit'rs.

16 EASTERN DISTRICT OF NEW YORK, *ss:*

Dennis McMahon, being duly sworn, saith that he is the proctor & advocate for the above petitioners in the foregoing petition; that he individually, & as a member of the law firm of D. & T. McMahon, has charge & direction of the interests of the said petitioners in the said petition, & also in the admiralty cause in the U. S. district c't for the eastern district of New York, & on the appeal in the U. S. circuit court for the said district therein referred to, and is acquainted with all the litigations and proceedings mentioned, & referred to in the said petition, & that the same are therein correctly stated of deponent's own knowledge & belief, except as to those matters therein stated on information & belief of the petitioners, & and as to those matters he believes the same to be true.

And further deponent saith that he believes that his clients are now at sea. And further saith not.

DENNIS McMAHON.

Sworn to before me, this 13th day of March, 1872.
JOHN A. SHIELDS.
U. S. Commissioner, S. D. of N. Y.

17 B.

U. S. district court.

MAX. NEWMAN
vs.
THE BARK KREPLIN, &C. } Dec. 21, 1870.

BENEDICT, J.

This is a cause of subtraction of wages, instituted by Max. Newman

who was the chief mate of the Prussian bark "Elvin Kreplin," to recover the sum of $173, being the amount of his wages earned in the capacity of chief mate of that vessel, & also the sum of $1,158, which is the aggregate amount of the wages of the crew, which he claims to recover as assignee of the seamen.

A statement of the facts in proof is necessary to an understanding of the many questions raised.

The time of service and rates of wages are not disputed. The libel covers the term of service for which the men were shipped to have been two years, which has not yet expired. The term of service being admitted in the libel, is to be taken as proved, although it is not entirely clear from the agreement itself that such was its legal effect. In
18 prosecution of her voyage, the brig arrived in this port, and war having broken out between Prussia and France, she was compelled to lay up here to wait for peace. She was, accordin'ly, laid up at Staten Island, and while the difficulty arose which gave rise to the present litigation.

It appears that, on the morning of the 1st of August, before breakfast, the master undertook to chastise the cabin-boy in the cabin. The boy's cries being heard by the crew, who were at work on deck, they went in a body into the cabin and challenged the right of the master to chastise the boy. The master thereupon desisted, and the crew returned to their work on deck. The master soon followed, and an altercation ensued between the master and crew, in which various complaints were made and some vile epithets applied to the master by the mate, who was not in the cabin with the men, but in the altercation on deck took part with the crew. During the dispute, the men, in a body, demanded permission to go before the consul with the complaints. Permission was given to one named Lutte, and perhaps also to Mar-
19 tens. The permission to Lutte is conceded by the master, but permission to Martens is denied. Upon permission being given to Lutte, the crew cried out, "We will all go." When the dispute ended, the captain went to his breakfast, and after breakfast went ashore to obtain, as he says, the aid of the police, on account of the mutinous condition of the crew. After he was gone, the crew, having finished cleaning the decks and eaten their breakfast, dressed, informed the mate then in command that they were going to the consul, and went ashore. No objection was made by the mate beyond a suggestion that they had better wait till the captain returned. Soon after the men had left the captain returned and was informed by the mate that the crew had gone ashore. Words thereupon passed between him and the mate, which resulted in the mate's saying, "I will go, too." Whereupon he also left without any objection by the master. On leaving the ship the mate proceeded to the ferry leading to New York City, where the office of the Prussian consul is located. The rest of the crew appear to have followed the carpenter, who went to the police station to
20 enter complaint against the master for beating the boy, in whom the carpenter, doubtless, took more interest than the others, as he came from the same town in Germany. The master soon appeared at the police station, and shortly after at the ferry-house with a policeman. The mate, at their request, accompanied them to Justice Garret, a police justice of the village of Edgewater. There the captain made a complaint against the whole crew, including the mate, for mutiny and desertion, but was informed by the justice that he was without jurisdiction, and that application must be made to the United States courts. The justice, however, was afterwards induced to direct a policeman to

take the men into custody if he would do so at his own risk. This the policeman did, and the mate and men were then locked up.

The master next proceeded to the consul's office, and there made complaint in writing, of which a protocol was made describing the occurrence of the morning on board the ship, and stating that the men were then in custody on Staten Island, and ending as follows: "I re-
21 quest of the Consul General the punishment of the entire crew, especially of the mate, Newman, who has instigated the complot—since my life is not safe, I request that the entire crew be kept in custody preliminarily, and under existing circumstances, I cannot again take the mate on board." The consul thereupon issued a requisition, the substance of which has been proved in the absence of the original. To whom this requisition was addressed is not certain. Justice Garret thinks that it was addressed, "To any marshal or magistrate of the United States;" but it was written on a blank, which was addressed, in print, "To the commissioner of the circuit court of the United States for the district of New York," and it is not shown that the blank address was altered or filled up.

This requisition, after referring to the treaty with Prussia, stipulating for the return of deserting seamen, and authorizing the consul to require the assistance of the local authorities for the search, arrest, and imprisonment of deserters, represented that these seamen, naming them, and including the mate and Lutte, had deserted from this vessel on
22 that day; that the consul made application for a warrant to the marshal of the said district, to cause the men to be arrested, and "if said charge be true," that they be detained at the consul's expense until there should be an opportunity to send them back. No action was taken by the consul in regard to the master's complaint, except to deliver this requisition to the master, who, instead of presenting it to a U. S. commissioner, took it to Justice Garret the next morning, and thereupon Justice Garret, without examination, committed all the men to the common jail of Richmond County, his commitment stating that it was upon the complaint of the master for desertion, and contained no allusion to the consul's requisition. On the 9th of August, the master desired a release of some of the crew, and the consul appears to have directed a release of them all. But no order for their return to the ship was made by the consul or asked for by the master, nor was the prosecution of the men before the consul directed. On the 11th of Au-
23 gust, two policemen took the mate and three of the men from the jail to the consul's office, and were there directed to release them, and the men were advised to go on board and persuade the master to pay them their wages. The next day the remaining four were released from jail, and during the day all the men appeared at the consul's office. They were again advised to go to the ship and ask the master for their wages, but they had no money to pay their ferriage from New York to Staten Island. By putting all their means together, however, enough was found to pay the ferriage of three; accordingly, the mate, the carpenter, and Lutte went to the ship and saw the master. The mate testified that the captain promised to pay him, and appointed the next day to meet him at the consul's. The master admits making the appointment, and that he gave the mate his navigation-book, and entered in it the credits to date; but denies the promise to pay him. As to what actually took place at this interview, the witnesses differ, but the result was an arrangement to meet at the consul's office the
24 next day.

This meeting never took place. The men and the master ap-

pear to have been at the consul's during that day, but they failed to meet, although the master says that as he came down from the consul's he saw Torriff and Reischoff, whom he asked to return to the ship, and they laughed at him and said "No, not a bit of it." Subsequently this action was commenced.

Upon these facts it is contended that these seamen are not entitled to recover their wages admitted to have been earned in the service of this vessel, and upon several grounds:

First. Upon the merits. It is said that the wages have been forfeited by desertion.

The charge of desertion against the mate has no foundation. He left the ship openly, without objection from the master, without taking any of his clothes, and with a remark, which, under the circumstances, was a notification that he was going to see the consul. He was shortly arrested and cast into prison and there kept during ten days of
25 the extremely hot weather of last August, and then let out without a request or suggestion that he return to the vessel. Indeed, the master had expressly declared that he should not return. It is vain to contend that these facts present any of the features of desertion so far as the mate is concerned.

With regard to Lutte the case is still stronger, for the master conceed's that Lutte asked and obtained of the master permission to go to the consul. He also was, in a smilar manner, imprisoned as a deserter.

With regard to the other seamen the case is simply one of leaving the ship without permission. "It has been uniformly held that it is not desertion for the seamen to leave the vessel, against orders, to go before the consul at a foreign port to complain of their treatment." (1 Pars. Mar. Law, 470—note.) In this case the men did not take their clothes. When the master gave permission to Lutte to go to the consul's, they announced their intention to go, too, when they left, and informed
26 the mate, who was then in command, (The Union, Bl. & H., 563,) that they were going to see the consul. Upon the evidence I find nothing to justify the master in supposing that the men were not going to the consul, and would not return to the ship at nightfall, and yet they were all at once arrested and cast into prison, and, so far as appears, without any prior request that they return to the ship. To hold such a leaving of the ship to be desertion is impossible. But it is said that when released from jail, they refused to return to duty, and are therefore deserters. There is some evidence to this effect, but it is loose, and, upon a consideration of all the evidence, I am satisfied that the master never, in fact, communicated to the men either an intention to forfeit their wages or a desire to have them again in his service. As to the mate he had expressly refused to have him on board. As to Kruise & Kerschoff he had, before the difficulty, given them to understand that they would be permitted to leave. He was half-owner. His
27 vessel was laid up to await the result of a great war—only the services of watchmen were required on board, and he had engaged two other men for that duty. He had, therefore, no reason to desire the return of the men, and, I am satisfied, did not desire it, although he may have been quite willing to make out a case of desertion, in the hope of saving the very considerable sum due the men; but his action was such as to lead the men to suppose that their leaving the service of the ship was acquiesced in, and such it appears was the impression formed by the consul, for he says he told the men he was sure the captain would pay their wages.

I am, therefore, of the opinion that the connection of the men with

the ship was severed by mutual consent, and, consequently, they are entitled to their wages.

But if this be not so, I am of the opinion that the conduct of the master, in imprisoning these men, was unlawful, and sufficient to dissolve the contract of the mariners, and I apply to the case of these foreign seamen in an American port the same rule which our courts have
28 applied in cases of the imprisonment of American seamen in foreign ports. The rule is stated as follows: The practice of imprisoning disobedient and refractory seamen in foreign jails is one of doubtful legality. It is certainly to be justified only by a strong case of necessity. It should be used as one of safety rather than discipline, and never applied as punishment for past misconduct. (The Mary Gilpin, 31–32.)

In Joellen vs. Williams (1 Curt. C. C. R., 81) it is stated as settled that it is not one of the ordinary powers of a ship-master to imprison his men on shore. The imprisonment inflicted on these men was without justification. The only excuse for it is the occurrence on the morning of the 1st of August, above detailed, which was not a very serious matter The men were undoubtedly wrong in appearing in the cabin, and calling in question the master's right to punish the boy, for which, perhaps, there is some palliation in the fact that while the crew doubtless knew that, by the Prussian laws, corporal punishment of seamen is not
29 permitted, they may not have known that, by the same laws, "ship-boys are subjected to the parental chastisement of the master."

The punishment of the boy in this instance was not cruel, and the men could not complain of some punishment inflicted on them for their appearance in the cabin, and their disrespectful language afterwards, on deck; but there was nothing alarming in the temper of the crew; there had been no difficulty with them before this, and nothing occurred on this day which any master of order, judgment, and firmness would not have easily dealt with; no weapons were shown, no blows struck, no threats made except that of reporting to the consul, and if punishment was thought necessary, it should have been inflicted on board, and not by imprisonment in a foreign jail. Neither does the master stand excused if it be considered to have been shown that he really thought the men had left the ship with intent to desert, for his whole conduct was unlawful. No law permits the imprisonment
30 of deserters in our jails except on proof of the facts before a competent tribunal. The act of March 2nd, 1829, which is the only statute enacted to render effective the provisions of art. 11, of the treaty with Prussia requires an application by the consul, with preliminary proofs before a magistrate having competent jurisdiction, and the warrants of such magistrate, for the arrest.

The seamen cannot be surrendered to the authority of the consul until an examination be had before the magistrate, and the statement the seamen is a deserter, found to be true. And the arrest and detention of the seamen in such cases, is not for punishment, but simply for safe keeping until he can be sent back. Here the men were imprisoned in the first instance for a day and a night upon the request of the master, without any of the preliminary proofs required by the statute, and without the interposition of the consul. And when, on the next day, the consul issued the requisition for an examination before a U. S. com-
31 mission', the master took it to the public justice, when it was used apparently by way of inducement, for the imprisonment was then continued for some ten days, upon the complaint of the master, and not

by virtue of the requisition. This imprisonment was in law the act of the master; he caused it to be done by a magistrate known to him to be without jurisdiction; nor can he protect himself by saying that he acted under the direction of the consul. The consul made no requisition upon the police justice, and never requested that officer to imprison the men, and his requisition is not alluded to in the commitment. He did direct somebody to release them, but it is not shown what person, other than the captain and the policeman he so directed; it is also true that he paid the jail fees to the jailor, but there is evidence showing that this payment was for the account of the master.

If it be true (Croble R., 241, The Coriolanus; Wilson vs. The Mary Gilpin, 31; see Josan vs Williams, 1 Curt. C. C. Rep., 82,) that a master
32 is not responsible for an imprisonment inflicted by competent authorities, under the order of a consul, it is also true that he is responsible for an imprisonment inflicted at his request by a police justice, without jurisdiction in the premises. (Snow vs. Wope, 2 Curt. C. C., 304.)

In every aspect then, the conduct of the master in respect to these men was unlawful, and it appears to me without excuse. Three of the men who have appeared before me are men of intelligence, and of truthful appearance. The mate appears quite the equal of the master, and is, in fact, his connection, by marriage. The difficulty arose in a port where there was every opportunity for protection and for lawful investigation, and there was nothing requiring haste.

Such an imprisonment made under such circumstances, I consider snfficient whithin the principles of the adjudged cases to dissolve the marriners' contract, and entitle the men to their discharge. But it is said that the men contracted not to sue in a foreign country, and
33 therefore the action cannot be maintained. This position is based upon the words of the ship's articles, or muster-roll which declares that "the seamen hire themselves on the above-mentioned vessel in accordance with the legal regulations printed in the book of navigation.

The book of navigation referred to is a book which is furnished to every Prussian seaman, and which contains the name of the holder, with a deseription of his person, and a memorandum of every shipment and every discharge of the holder, signed by the mustering authorities. The book contains also a printed appendix, where may be found certain extracts from the Ger.nan mercantile law, among which extracts is this provision: "The seaman is not allowed to sue the master in a foreign court." Assuming that this provision of law is incorporated into the agreement by the words used in the articles, and therefore to be considered as part of the contract, which is not clear, the first answer is, that the provision, by its express terms, is made to relate to suits
34 against the master, which this is not. Another answer is, that the master having by his unlawful conduct, in violation of his contract, absolved the men from their agreement, has absolved them from the whole of it, and this portion with the rest. (Schulinburg vs. Wessels, 2 E. D. Smith, R., p. 71.) In the English courts a foreign statutory prohibition of this description has been considered not enforceable unless incorporated as part of the contract. (McLachlin, p. 226.) In the American courts it has been held that such a provision in the contract will not be enforced "when the voyage, as respects the seamen, is put an end to," (The St. Oloff, 2 Pet. ad., 415,) "when the interest of justice demand it," (Boker vs. Kloskyster, abb. ad. R., p. 408,) "when the seamen are left destitute by an improper discharge." (Id., 408.)

Again, it is said these seamen are Prussian subjects, and this a Prussian vessel, and therefore the court is without jurisdiction in the premises by reason of the treaty between the United States and Prussia, ratified in 1828. (8 Stat at Large, p. 382.)

35 This position, which has been urged upon my consideration with earnestness and ability has received my careful consideration. The provision of the treaty is as follows: "The consuls, vice-consuls, and commercial agents shall have the right as such to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquility of the country; or the said consuls, vice-consuls, or commercial agents, should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the rights they have to resort on their return to the judicial authority of their country."

This provision is entitled to be fairly construed, and to be faithfully carried out. In considering its application to the present case, I

36 remark (first) that its language does not precisely cover an action in rem. Such an action is more than a mere difference between the master and the crew. It involves the question of a lien upon the ship, and her condemnation and sale to pay the same. In the absence of any express words it is hard to infer that it was intended to confer upon consuls and vice-consuls the power to direct a condemnation and sale of a ship—a proceeding which brings up for determination many questions besides those relating to seamen; however, the statute of August 8, 1846, which was passed to render effective this provision of this treaty, confers upon commissioners of the circuit court full power, authority, and jurisdiction, to convey into effect the award, abstraction, or decree of the consul, and for that purpose to issue remedial process, mesne and final, and to enforce obedience thereto by imprisonment. It certainly cannot be supposed that it was the intention to give to the commissioners of the circuit court power to make a decree in rem, and direct the sale of a ship.

37 This position that the treaty is not applicable to the present case because it is a proceeding in rem, which did not strike me with much force upon the argument, has gained strength in my mind by reflection, and I confess that I am now inclined to the opinion that it is well taken; but I do not intend to rest my determination upon it, nor do I dismiss the position that the treaty was not intended to apply to any differences between the master and the seamen alone, such as assaults and the like, and does not cover differences as to wages to which the owners as well as the ship are always real parties. But I pass on to say that it appears to me from the words of the treaty and the statute passed to render it effective, that it was not intended to change the jurisdiction of the courts, but simply to require the courts to decline jurisdiction of differences between the master and crews of Prussian vessels in all cases where the consul has acted or perhaps is ready to act as a judge or arbitrator in respect to such differences. With-

38 out such a treaty the practice of courts of admiralty has been, in the exercise of a sound discretion, to decline jurisdiction of demands of seamen of a foreign ship wheresoever the consul should show reasonable grounds for such declination by the court and his willingness to determine the controversy has been held sufficient ground to

warrant the exercise of such discretion, (the Nina, W'ms & Bro., ad., p. 180, N.,) and his actual determination would present equally good grounds. The treaty and statute in question, appear to me to be intended to make positive & certain in the cases specified what was before dependant upon desertion. I cannot think it was intended to permit the consul to refuse to act in any case, and the same time to withhold from the master and crews all right to resort to the courts of the land; nor can I consider it probable that if it had been the intention to take away any portion of the long settled jurisdiction of the
39 courts of the United States, such an intention would not have been plainly expressed in the treaty, and at once plainly declared by the law-making power, instead of being left to be inferred from the words of the treaty, and of a statute passed many years afterwards, (act of Aug. 8, 1846, 9 Stat. at Large, p. 78.) I judge, therefore, that by virtue of this treaty and statute, the consul may act as judge and arbitrator in the cases specified, and may have his decree or award confirmed without being interfered with by the local courts; but that if he fail so to act, reasonable opportunity having been given, the courts are not prohibited from determining any such case, it being within the scope of that jurisdiction which has been expressly conferred upon them by law. And this position is taken by the Prussian consul general who, has presented to this court his respectful protest against the examination by this court of the matter in hand, when he states that in
40 fact the matter had been adjudicated by him before the filing of the libel in this action. This is not the only position, but one of the positions taken in the protest, and the same position is taken by the answer to the libel where the prior adjudication of the consul general is set up, which it has been attempted to prove. Under the construction of the treaty above stated, I am, therefore, brought to the consideration of the evidence which has been introduced in support and in contradiction of the averment of the answer that the Prussian consul has already acted as judge or arbitrator in respect to the demand of these seamen and determined the same. The words "judge and arbitrator," *and* in the law must be taken in their ordinary significance. They imply investigation of fact upon evidence, the exercise of judgment as to the effect to be given thereto and a determination therefrom. I cannot hold, upon the evidence in this case, that the consul has, in respect to the matter in dispute, exercised the function permitted him by the treaty.

41 He examined no witnesses. He did not bring the parties before him, and he made no definite determination whatever. The men say that he refused to hear their story at all. The mate swears that he demanded to see the captain's charge against him and was refused. The vice-consul denies this and says that he did listen to the men and, as they admitted themselves deserters, there was nothing to do but to tell them they had forfeited their wages, which he did; but he cannot say what persons admitted having deserted, and, on cross-examination, he shows that the admission was simply an admission by some, he does not know who, of having left the vessel without leave; and he admits having urged the men to go and see the captain, and expresses confidence that, if they spoke civil, the master would pay them their wages; which appears to be inconsistent with the idea that he had passed on the demand and adjudged the men not entitled to
42 any wages whatever. Furthermore the vice-consul himself testifies "no adjudication was made in writing—a memorandum only was made." "A requisition has been made and given to captain to be

given to the court." "No other adjudication was made." To l such proofs that the vice-consul had, as judge, made a decree, or, as arbitrator, made an award in respect to this demand, would countenance a mode of procedure which the treaty does not sanction and which I should be sorry to see obtain. My conclus ion, therefore, upon the evidence is that there has been no such examination and adjudication of the matter in hand, by the consul, as the treaty intends; and it is not shown that such adjudication is intended to be had. The case is therefore simply one where the consul fails to act under the treaty and no interference with any consular decree or award can result from the action of the court in entertaining this proceeding.

In the absence of any effect of the treaty upon the jurisdiction
43 of the court, the case is subject only to those rules which have been generally applied in actions brought by foreign seamen. So considered it is apparent that the protest of the consul does not afford a reasonable ground for declining to entertain jurisdiction, inasmuch as the reason he gives, namely, that he has already adjudicated upon the claim, is not substantiated by the evidence, while there are circumstances which strongly urge the exercise of jurisdiction—such as the fact that the master is half owner of the vessel and is here with her, as also the seamen are. The ship is, moreover, laid up here by reason of war, nor can it be told when she will return to her home port, if ever.

It is vain, therefore, to say to these sailors, who are penniless, and who have earned some $1,100 in wages, that they must wait the return of the ship to Prussia and be there at the time so as to enforce there their
44 demand. If they cannot now maintain their action they will practically be deprived of all remedy In considering this case thus far, I have considered the action of the vice-consul as equivalent to that of the consul and have so spoken of it. In point of fact, Dr. Kolsing, the consul general, who signed the requisition, which is the only official act proved, aside from the memorandum on the protocol, never saw either the master or the men—the vice-consul acting for him in everything except signing the requisitions.

I have also spoken of the consul as the consul of Prussia and have considered him to be the official referred to in the treaty with Prussia. The point has been taken that the proofs show Dr. Kolsing to be consul general of the North German Union, and that there are now no consuls of Prussia nor any similar treaty with the North German Union. But it appears from the law proved that the consul of each power, comprehended in the Union, which is a confederation rather than a
45 union, besides the Executive Department, recognises Dr. Kolsing as the consul of Prussia, by virtue of his appointment as consul general of the North German Union, and the courts are bound by the action of the Executive in such a matter, the question being political and not judicial.

There remains to allude to the phase of this case, which is presented by the fact that the libel is filed by Newman, the mate, to recover his own wages, and also the wages of the other men as the assignee of their demands. So far I have treated the case as if all the men were parties libellant. The evidence shows the execution of a formal assignment to the mate of the claims of the other men. But it also appears that the assignment was without consideration, and that the men all expect to receive whatever may be recovered as their wages.

This mode of procedure, to save multiplicity of suits, seems to have been adopted in ignorance of the rule of the admiralty, which enables several seamen to join in one action, and the mate upon the trial

46 filed a consent that the other men be now joined as colibellants, and receive in their own persons whatever might be awarded for their claims.

Upon such consent and such facts I deem it competent to permit all the seamen to join in the action upon petition to be made colibellants, and on showing the cancellation of their assignment to the mate to take a decree in their own names for the wages found due them. Two of them are minors, it is true; but in the admiralty, minors, who are mariners, are permitted to sue for their wages in their own names.

All seamen are, in a certain sense, treated as minors in maratime courts. In accordance with these views let a decree be entered in favor of the mate for his wages earned in the service of this vessel, and still unpaid, with a reference to ascertain the amount; and let similar decrees be made in favor of the seamen upon the filing of their petition, and showing the cancellation of their assignments to the mate.

47 "C."

Circuit court of the United States for the eastern district of New York.

MAX. NEWMAN ET AL.
vs.
THE BARQUE ELWIN KREPLIN.

WOODRUFF, *Circuit Judge.*

By the tenth artice of the treaty made by the United States with the King of Prussia on the 1st of May, 1828, (8th U. S. Stat. at Large, 378,) it is provided that "the consuls, vice-consuls, and commercial agents," which each of the parties to the treaty is declared entitled to have in the ports of the other, "shall have the right as such to sit as judges & arbitrators in such differences as may arise between the captains & crews of the vessels belonging to the nation whose interests are committed to their charges without the interference of the local authorities." * * * "It is, however, understood that this species of judgment or arbitration shall not deprive the contending parties of the right they have to resort on their return to the judicial authority of their
48 country." To this general rule there is a qualification, viz: "Unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country, or the said consuls, vice-consuls, or commercial agents, should require their assistance (the assistance of the local authorities) to cause their decisions to be carried into effect or supported."

This treaty is, by the Constitution of the United States, the law of the land, & the courts of justice are bound to observe it.

When a case arises which is within this provision of the treaty, jurisdiction thereof belongs to the consul, vice-consul, or commercial agent of the nation whose interests are commit'ed to their charge, and with the exercise of that jurisdiction the local tribunals are not at liberty to interfere unless such consul, vice-consul, or commercial agent requires their assistance to cause their decision to be carried into effect or supported.

In the present case the mate & several of the crew of the
49 barque Elwin Kreplin prosecuted their libels against the vessel, for the recovery of wages alleged to be due to them, which the master of the vessel denies to be due, upon various grounds, and the vessel was attached to answer. The master of the barque intervening for the in-

terest of the owners of the barque, sets up in his answer various grounds of defense to the claim, some of which arise under the laws of Prussia, and especially he invokes the protection of the treaty above-mentioned, & denies the jurisdiction of the district court, alleging, moreover, that the matter in difference, the claim of the libellants for wages, has already in fact been adjudicated by the Prussian consul at the port of New York.

Before the cause was tried in the district court, the consul general of the North German Union presented to the district court his formal protest against the exercise of jurisdiction by that court in the matter in difference. He invoked therein the treaty above referred to, and claimed exclusive jurisdiction of such matters in difference; and
50 he also declared that, before the filing of the libel the said matter had been adjudicated by him, and insisted that his adjudication was binding between the parties, and could only be reviewed by the judicial tribunals of Prussia.

The barque is a Prussian vessel. The mate and crew are Prussian seamen, who shipped in Prussia under & with express reference to the laws of Prussia referred to in the shipping articles; and it should, I think, be assumed that the treaty which binds this nation and its citizens & seamen binds also Prussia & her subjects & seamen.

The consul general of the North German Union is commissioned by the King of Prussia; and, by certificate of the Secretary of State of the United States, under the seal of that Department, it appears that the Executive Department of the United States recognizes the consuls of the North German Union as consuls of each one of the sovereign States composing that Union, "the same as if they had been commissioned by each one of such States."

51 The kingdom of Prussia is one of the States composing the North German Union. The treaty does not require that the consuls, vice-consuls, &c., should bear any specific name. It is sufficient that the "interests" of Prussia "are committed to their charge," and quite sufficient that the Government of the United States by its Executive recognizes the consul as consul of the Kingdom of Prussia.

The discussion of the case at the hearing on the appeal is on the part of the libellants very largely devoted to the merits of the claim for wages upon principles applicable, it may be, to the subject, if no such treaty was in force, and under decisions of our courts in reference to the rights and duties of seaman & master; the effect of misconduct of either upon the obligation of the other for the purpose of showing that the treatment of the libellants by the master exonerated them from their duty to serve according to the terms of the shipping articles, and also from all other of its stipulations, even from such as arise
52 from the laws of Prussia, forming a part of the terms, stipulations, & conditions, which enter into the relation of the crews to the master & owners & to the vessel. That discussion is very full, & was presented in argument with great ability by the counsel for the libellants. Within most of the rules of law invoked by the consul, when considered apart from & independent of any treaty stipulations, the respondents have no contest, and they are no doubt settled by the cases cited.

But the prior question of jurisdiction must be determined before it is competent even to enquire into the merits of the libellants' claim to recover their wages. In the first instance it would seem clear that a claim of the crew of a Prussian vessel to recover wages which the master of the vessel either denied to be true or refused to pay, was

par eminence a matter in difference between the captain & crew, which, by the very terms of the treaty, the Prussian consul or vice-consul, had jurisdiction as judge or arbitrator to determine "without the interference of the courts of this country."

53 And such jurisdiction, when it exists, is, by such terms as these, exclusive.

It is, however, claimed that the present case is not at all embraced within the treaty, for the reason that it is a proceeding in rem to enforce a maritime lien upon the vessel itself, and not a difference between the captain & crew; and also, because the Prussian consul has no power to conduct & carry into effect a proceeding in rem for the enforcement of such a lien.

The treaty can receive no such narrow & technical construction. The master is the representative in this port of the vessel & of all the interests concerned therein.

He is plainly so regarded in the treaty. The matter in difference in this cause is the claim for wages. That arises between the crew and the master, either as master or as the representative here of vessel & owners. It is precisely that which is in litigation in this case. The lien and the proceeding in rem against the vessel appertain to

54 the remedy & only to the remedy. The very first step in this cause is to settle the matter in dispute. If the claim be established, then, as incident to the right to the wages, the lien and its enforcements against the vessel follow. The district court can have no jurisdiction of the lien, nor jurisdiction to enforce it if it has no jurisdiction of the difference or dispute touching the claim for wages. To hold that the jurisdiction of the consul is confined to cases in which there is no maritime lien, and in which no libel of the vessel could, apart from the treaty, be maintained, is to take from the treaty much of its substance. The existence of any lien & of any right to charge the vessel are in difference here. To say that the treaty gives the consul jurisdiction of claims against the master in personam, and does not include a claim to remove the vessel itself from his custody as the owner pro hac vice, or as the representatives of all the interests therein, that the voyage may be broken up, the vessel may be sold for the

55 wages of the crew, and that an effort by judicial proceeding to do this is not included in the terms. A difference arising between captain & crew seems to me to destroy the very substance of the stipulation & defeat its obvious purpose to confine both masters & crews of Prussia to the rights & obligations of the Prussian laws, & compel obedience to its mandates. And be it observed the treaty gives the seamen protection, & requires the like obedience by masters & crews of vessels of the United States. It does not add to the legal reasons for this view, but if a vessel of the United States were sold in a port in Prussia to pay the wages of its crew, alleged by the master not to be payable, & in repudiation of any right of the United States consul at that port to act as judge or arbitrator upon that claim, it would at least, stimulate our quickness of apprehension to discover, & incline us to insist, that the treaty intended to protect our ship-owners against the application of foreign laws and the decisions of foreign

56 courts to our vessels, and the relations of the masters and crews thereof.

To the suggestion that the consul has no power to enforce the maritime lien & cause the vessel to be sold to satisfy the wages, if he should find that wages were due and payable, it is sufficient to say that the treaty has been deliberately entered into & has become the law for both

nations. Each preferred to employ its own officers. The power given to consuls to act as judge or arbitrators is not made final. The parties have the right of resort to the tribunals of their own country without being concluded by the decision of the consul.

This was deemed a sufficient protection, & to afford for the time being a sufficient remedy to both master & crew, and it is not for this court to say that the remedy here, by attachment of the vessel, will be more efficient & useful, & on that ground to apply it. Besides, this court cannot know that the remedy, by resort to the vessel, is
57 not, if it exists, so regulated in Prussia that it was intended that her seamen should not invoke against the vessel the remedies permitted by our laws under the mode of administration & rules of decision by which our courts are governed

And further, under the expressed exception which permits resort to local tribunals by consuls, &c., who may require their assistance to cause their decisions to be carried into effect or supported, it is plausible at least to say, that if the consul decided on a difference between master & crew that wages are payable, the power of the court to attach & condemn the vessel for their payment may be invoked to support & give effect to such decision. Again, it is said that in this case the captain & crew were not confronted before the consul, witnesses were not examined, no adjudication in writing was made, but the consul only orally declared his judgement of the matter in difference after hearing the statement of the master and the statements of the libellants,
58 and then declared that he had nothing further to do therein. The proceeding does not, it is true, conform to our ideas of the requisites of a judicial proceeding; but are the courts of this country to prescribe to the Prussian consul the forms & modes of proceeding which he must adopt when he acts as a judge or arbitrator between master and crew under this treaty. Must he follow the practice & be governed by the rules governing trials or arbitrations under our laws? Must our consuls in Prussia follow the rules & practice of that kingdom? If so, then the district court here was sitting as a court of error to review the judgment or award of the Prussian consul.

What can this court say are the formal requisites of a Prussian arbitrator? It is manifest by the reservation of the right to resort to the judicial tribunals of the country without being concluded by the decision of the consul that the proceeding before him as an arbitrator or judge was intended to be summary, & its conduct left very much in his discretion, and especially it is manifest that the nations re-
59 spectively intended to confide in their consul, and temporarily entrust to him the adjustment of differences between officer & crew of their vessels in the port of the other And it was not intended that the courts of such other nations should sit in judgment upon the form or regularity or the justice of the acts of the consul, or interfere therewith in any manner. It was deemed safe and proper to leave to such consuls this temporary administration of the interests of their seamen abroad, assured that they would act with fairness & integrity therein, but yet giving the right of full & final investigation & adjudication at home, where home laws, home remedies, and home modes of investigation could be resorted to. The district court here not only passed upon the requisites of proceeding as judicial, or as an arbitrament, but assumed to enquire into the details of the evidence & the truth of the declared grounds upon which the vice-consul testified that he acted, & which he says were before him in the admissions of the crew, thus, in

effect, reviewing the law & the facts which the consul made the
60 basis of his decision.

It is claimed that the consul did not act as judge or arbitrator & determine this case, and not having taken jurisdiction, a proceeding in our courts is no interference in disregard of the treaty.

It is by no means clear that the attachment of the vessel on the libel of the crew is not in itself such an interference as precludes the action of the consul. But in this case, the argument disregards the clearly-established fact that the consul, or his vice-consul, (who is in terms included in the treaty, and whose acts in the matter the consul recognized,) did hear the parties respectively. On the statement of the case by the crew, (who, whichever of them was, in fact, speaker, had the opportunity to tell their story,) he pronounced against them. On their own story he decided that they had forfeited their wages by the Prussian law, applied to their contract of shipment.

And afterwards, when this suit was commenced, he formally represents to the court that he had already adjudicated the matter in
61 difference, & claimed that his jurisdiction for that purpose is exclusive of the courts of this country. It was after such declaration of his decision to the crew, that he, knowing that the vessel was laid up, advised them to see the captain, &, by civil & conciliatory deportment, induce him to waive the forfeiture, and pay the wages which had accrued.

In the situation in which the vessel & her master then were, it is obvious that, if the men had forfeited their wages, (of which I here express no opinion,) their acts had wrought no great harm. The captain had no present need of the services of so many, & many circumstances might properly have moved him to pay their wages, and let them go.

The advice of the consul indicated that he thought the loss of their services was no inconvenience to the captain, and even if wrong theretofore, they had claims to his consideration while destitute & in a foreign country, which might, & perhaps ought to, induce him to pay their wages. This is all there is of the argument that the consul him-
62 self regarded the crew as practically discharged.

I do not purpose to examine the merits of the libellant's claim for wages.

That they were, on the requisition of the consul, & without sufficient grounds therefor, held in prison as deserters, is most probable. That their departure from the vessel & going ashore without leave, & against the will of the master, (save as to one who had his consent,) is not desertion by law, unless it was done without the intention to return, is no doubt true.

That the master did not, in fact, consent to the discharge of any of them I think is clear, while I think it is in the highest degree probable that if this difficulty had not arisen, he would have, (in view of the laying up of the vessel,) consented to part with most of them. I do not think it certain that an imprisonment, on the requisition of the consul, though induced by a statement of the facts by the captain, operated to discharge the seamen from their articles, even though the imprisonment was not warranted by the facts. (Jordon vs. Williams, 1 Curtis, 70–83.)

63 Nor is it certain that, under this treaty and the act of March 2nd, 1829, (4 Stat., 359,) a State magistrate can have no jurisdiction to arrest & detain a seaman alleged as a deserter.

True, the laws of the United States may not make it the duty of a State judge to act, but it does not follow that, if he is included in the law, his acts will be without authority. There are many powers

conferred upon State magistrates by the laws of the United States, which, if executed, are valid. Whether such magistrate is bound to accept the authority, and act upon it, is another question. The act of Congress, in determining the duty, confers the power on "any court, judge, justice, or other magistrate having competent power to issue warrants to arrest," &c. (See Parsons on Shipping, p. 102; Kentucky vs. Dennison, 24 How., 197, 198.)

It is apparent that the requisition was given to the master to be delivered to the justice at Staten Island, who, as the captain in-
64 formed the consul, then detained the seamen. And if, as stated by counsel, (tho' it does not appear as printed in the copy proofs handed to me,) it was addressed to any magistrate, &c., the power of the magistrate is not clearly wanting.

But all these and other questions go to the merits; they bear on the broad question whether, under the terms of the shipping articles and the Prussian rules contained in the navigation book, &c., they had a right to their wages.

The effect of the stipulation not to sue in a foreign country, which appears to be one of those rules also, and what amounts to a discharge from the contract, actual or constructed, are questions on the merits; and the sympathy which the condition of these men, penniless in a foreign land, whether with or without fault on their part, must awaken in every mind susceptible of human emotion, strongly inclines to a condemnation of the conduct of the master in this matter. But I am constrained to the conclusion that the treaty required that this mat-
65 ter in difference should have been left where, I think, the treaty with Prussia leaves it, viz., in the hands & subject to the determination of their own public officer. The necessary result is the dismissal of the libels.

66 A.

United States district court for the eastern district of New York.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 7th day of August, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the said United States the ninety-sixth.

[L. S.] SAMUEL T. JONES, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the district court of the United
67 States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New

York, this 23d day of May, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the said United States the ninety-fifth.

[L. S.] SAMUEL T. JONES, *Clerk.*

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-room, in the city of Brooklyn, on the day of , in the year of our Lord one thousand eight hundred and seventy—

Present, Hon. Charles L. Benedict, district judge.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN.

The libellant files a petition against the above-named bark, in the words and figures following, to wit:

68 To the Hon. Charles L. Benedict, judge of the United States district court in and for the eastern district of New York:

The libel and complaint of Max. Newman, late mate on board of the Prussian bark Elwine Kreplin, whereof one Henry Fisher was master, against the said vessel, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of subtraction of wages, civil and maritime.

And thereupon the said libellant alleges and articulately proponnds as follows:

First. That, in the month of June, in the year one thousand eight hundred and sixty-eight, the said vessel, whereof the said Henry Fisher was master, being at the port of Trieste, in the Adriatic Sea, he, the said Fisher, by himself or his agent, on the high seas and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this court, did hire and ship one Abraham Martens, to serve as carpenter on board of said vessel for and during the space of two years from the date of said shipment, with the condition that, in case he so desired, he, the said Martens, could of his own free will leave said vessel at the termination of any one particular voyage, as will more fully appear from the shipping articles, signed by your libellant, in which his contract for said shipment is fully set forth, at the monthly compensation of 21 Prussian silver dollars.

That, in the month of March, 1869, the said vessel whereof he, the said Fisher, was master, being at the port of Pillau, in Prussia, he, the said Fisher, by himself or his agent, on the high seas and within the ebb and flow of the tide, and within the admiralty and maritime
69 jurisdiction of this honorable court, did hire and ship the following persons, to wit: Julius Kruse, Herman Luett, Charles Rieckhoff, and Albert Schroebeke, to serve as seamen on board of said vessel for and during the period of two years from said shipment; the said Kruse, Rieckhoff, and Herman Luett to receive the monthly compensation of 12 dollars Prussian silver coin, and the said Schroebeke the monthly compensation of 9 Prussian silver dollars, as will more fully appear by the shipping articles signed by them.

That, in the month of June, 1869, said vessel, whereof said Fisher was master, being at said Prussian port of Pillau, he, the said Fisher, by himself or his agent, on the high seas and within the ebb and flow of the tide, and the admiralty and maritime jurisdiction of this honor-

able court, did hire and ship your libellant and the following persons, to wit: William Speitz and Robert Tarrect; the former to serve as mate, and the latter two as seamen on board of said vessel, for and during the space of two years from said hiring; the said mate to receive the monthly compensation of 26 Prussian silver dollars, and the said Spietz the monthly compensation of 13 dollars in said coin, and said Tarrect 12 dollars in said silver coin per month, as will more fully and at large appear by the shipping articles signed by your libellant and said Speitz and Tarrect.

That, in pursuance of their several contracts of hiring on or about the time of the execution thereof, the said Martens, Kruse, Luett, Reickhoff, Speitz, Tarrect, Schroebeke, and your libellant went on board and entered into the service of the said master, as aforesaid.

Second. That the said vessel having taken on board a cargo of goods, made divers voyages with all of said above-named mariners, including your libellant and said carpenter, on board, and made freight; and that
70 the said several mariners above-mentioned, including your libellant and the said carpenter, continued on board and in the service of the said vessel from the time of their several hirings, as aforesaid, until the 1st day of August, 1870, when they were all discharged from said vessel.

Third. That, during the whole time they, the said Martens, Kruse, Luett, Rieckhoff, Schroebeke, Speitz, and Tarrect, and your libellant, were in the service of the said vessel, the Elwine Kreplin, to wit, from the times when they went on board of said vessel until the time of their discharge therefrom, they well and truly performed the duties appertaining to the positions they shipped to fulfil, according to the best of their ability, and were obedient to the lawful commands of their master, and the other officers of said vessel.

Your libellant further showeth that, at the time they, the said Newman, Martens, Kruse, Luett, Rieckhoff, Speitz, Tarrect, and Schroebeke, were discharged from the said vessel, the wages earned by them as aforesaid, were not paid to them or any part thereof except what is duly credited in the schedule hereto annexed, and there is due on account of said services, as will more fully appear by the schedule, marked "A," hereto annexed, to which, as and for a part of this his libel your libellant begs to refer, the aggregate sum of 1,158 Prussian silver dollars, which the owners of the said vessel hitherto hath altogether refused and still doth refuse to pay, although often requested by your libellant.

Fourth. That, subsequent to their aforesaid discharge and prior to the commencement of this suit, the said Martens, Kruse, Luett, Rieckhoff, Speitz, Tarrect, and Schroebeke, for a valuable consideration, duly assigned, transferred, and set over to your libellant all their right, title, and interest in and to whatever wages may be due them by reason of the services aforesaid.

71 Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this court.

Wherefore your libellant prays that process in due form of law, according to the course and practice of courts of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, wheresoever the same may be found, and that all persons having or pretending to have any right, title or interest therein, may be cited to appear and to answer all and singular the matters hereinbefore set forth, and that this honorable court would be pleased to pronounce for the wages aforesaid, and for such other relief in the premises as shall to law and justice appertain, and also to condemn the said vessel, her

tackle, apparel, and furniture, and the parties intervening therefor in costs.

M. O. H. NEWMAN.

D. & T. McMAHON,
Proctors for Lib't.
D. McMAHON, *Advocate.*

UNITED STATES OF AMERICA,
Eastern District of New York:

Be it remembered that, on this 24th day of August, 1870, before me personally appeared, at 189 Montague street, in the city of Brooklyn, the within-named libellant, and made solemn oath he had read the foregoing libel, that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me this 24th day of August, 1870.

DWIGHT A. PERRY,
Notary Public, Kings County, N. Y.

72 *Schedule marked "A," referred to in preceding libel.*

	Per month.		Received.	Balance.
Max. Newman ..... a ..	$26	$351	$150	$251
Abraham Martens ..... a ..	21	540	200	340
Julius Kruse ..... a ..	12	197	100	97
Herman Luett ..... a ..	12	197	82	115
Charles Rieckhoff ..... a ..	12	197	107	90
Albert Schroebeke ..... a ..	9	144	52	92
William Spelz ..... a ..	13	176¼	121	55¼
Robert Tarrect ..... a ..	13	192	75	117¼
Prussian silver dollars				$1,158

Filed August 24th, 1871.

To the master and owners of the bark Elwine Kreplin:

I, Charles W. Newton, United States commissioner, do hereby summon you to be and appear before me at my office, No. 68 Wall street, in the city of New York, on the 22d day of August inst., at 10½ o'clock in the forenoon of that day, then and there to show cause, if any you have, why process of attachment should not issue from the district court of this district against the bark Elwine Kreplin, her tackle, apparel, and furniture, according to the course of admiralty courts, to answer the claims of Max. Newman, for mariners' wages.

Given under my hand this 19th day of August, in the year of our Lord one thousand eight hundred and seventy.

[L. S.] CHA'S W. NEWTON,
U. S. Commissioner.

D. & T. McMAHON,
Proctors for Libellant.

73 (Indorsed:) District court of the U. S. for the eastern district of New York. Max. Newman vs. Bark Elwine Kreplin. Summons. D. & T. McMahon, proctors for libellant.

To the clerk of the district court of the eastern district of New York:

I hereby certify that there is sufficient cause of complaint whereon to found admiralty process in the within matter.

Dated this 23d day of August, 1870.

CHA'S W. NEWTON,
U. S. Commissioner.

Due and personal service on the claimants of a copy of the within summons is hereby admited.

N. Y., August 19th, 1870.

Proctors Claimants.

Filed August 24th, 1870.

Notice of this summons is admitted without waiving objections (if any) to the jurisdiction of the officer to issue; but no objection is to take the mode of service.

August 19th, 1870.

SALOMON & BURKE,
Proctors for Claimant.

74 EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the eastern district of New York, on the 24th day of August, in the year of our Lord one thousand eight hundred and seventy, by Max. Newman, late mate on board the Prussian bark Elwine Kreplin, against the said vessel Elwine Kreplin, her tackle, &c., in a cause of wages, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said bark or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said bark or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said bark or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the eastern district of New York, on the seventh day of September, 1870, at twelve o'clock noon of the same day, if the same shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter, then and there to interpose a claim for the same,
and to make their allegations in that behalf. And what you
75 shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Charles L. Benedict, judge of the said court, at the city of Brooklyn, in the eastern district of New York, this 24th day of August, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fifth.

SAMUEL T. JONES, *Clerk.*

D. & T. MCMAHON,
Proctors for Libellant.

(Indorsed.)

In obedience to the within monition, I attached the bark Elwine Kreplin, &c., therein described, on the 24th day of September, 1870, and have given due notice to all persons claiming the same, that this court will, on the 7th day of September inst., 12 o'clock noon, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

FRANCIS L. DALLON,
U. S. Marshal Eastern District of New York,
United States District Court.

Max. Newman vs. The Bark Elwine Kreplin, her tackle. Monition returnable September 7th, 1870. D. & T. McMahon, proctors for libellant. Filed the 7th day of September, 1870.

I hereby depute M. F. Brennan to execute the within process.
Dated August 24th, 1870.

FRANCIS L. DALLON,
U. S. Marshal.

76 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 8th day of September, in the year of our Lord one thousand eight hundred and seventy—
Present, the Honorable Charles L. Benedict, district judge.

THE SHIP ELWINE KREPLIN, &C.,
against
MAX. NEWMAN.

And now, Henry Fisher, intervening as agent for the interest of Johann Nicolaus Rodbertus in the said ship, appears before the honorable court and makes claim to the said ship, &c., as the same are attached by the marshal, under process of this court, at the instance of Max. Newman, and the said Fisher avers that he was in possession of the said ship at the time of the attachment thereof, and that the person abovenamed is the true and bona-fide owner of the said ship, and that no other person is the owner thereof, and the said Fisher, the true and lawful bailee thereof, as agent. Wherefore, he prays to defend accordingly.

HENRY FISHER.

SALOMON & BURKE,
Proctors for Claimant.

EASTERN DISTRICT OF NEW YORK, *ss:*

Henry Fisher, being duly sworn, deposes and says that he
77 resides ; that he is the agent of the above-named owner of said ship, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said ship, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

HENRY FISHER.

Sworn to and subscribed this 8th day of September, A. D. 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

District court of the United States for the eastern district of New York

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 8th day of September, 1870.

Whereas a libel was filed in this court on the day of August, in the year of our Lord one thousand eight hundred and seventy, by Max. Newman against The Ship Elwine Kreplin, her tackle, apparel, &c., for the reasons and causes in the said libel mentioned, and praying that said vessel be condemned, &c., and the parties hereto hereby consenting that, in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim has been filed in said cause by Johann Nicolaus Rodbertus:

78 Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

JOHANN NICOLAUS RODBERTUS.
HENRY FISHER, *Agent.*
HENRY BOLLAND.
J. W. ENGELKE.

Taken and acknowledged this 8th day of September, 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry Bolland and J. W. Engelke, parties to the above stipulation, being duly sworn, doth depose and say that *he* resides in the eastern district of New York; that *he* is worth the sum of five hundred dollars, over and above all *his* just debts and liabilities.

HENRY BOLLAND.
J. W. ENGELKE.

Sworn to this 8th day of September, 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

79 Circuit court of the United States of America for the eastern district of New York.

Filed the 8th day of September, 1870.

Know all men by these presents that we, Johann Nicolaus Rodbertus, Henry Bolland, and John W. Engelke, are held and firmly bound unto Francis L. Dallon, marshal of the United States for the eastern district of New York, in the sum of two thousand dollars, to be paid to the said

Francis L. Dallon; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 8th day of September, in the year of our Lord one thousand eight hundred and seventy.

Whereas a libel has been filed in the district court of the United States for the eastern district of New York, on the day of August, in the year of our Lord one thousand eight hundred and seventy, by Max. Newman, libellant, against The Ship Elwine Kreplin, her tackle, &c., for the sum of one thousand dollars, on which process of attachment has issued, and the said vessel is in custody of the marshal under the said attachment, and Johann Nicolaus Rodbertus has applied for a discharge of said vessel from the custody of the marshal, and has filed a claim claiming the said vessel as owner, and has filed a stipulation for the claimant's costs, pnrsuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above-bounden Johann Nicolaus Rodbertus, Henry Bolland, and John W. Engelke, shall abide by and perform the decree of this court,
80 then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHANN NICOLAUS RODBERTUS.
HENRY FISHER, *Agent.*
HENRY BOLLAND.
J. W. ENGELKE.

Sealed and delivered and taken and acknowledged this 8th day of September, 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Henry Bolland and John W. Engelke, being duly sworn, depose and say, and each for himself says, that he is worth the sum of four thousand dollars over and above all his just debts and liabilities.

HENRY BOLLAND.
J. W. ENGELKE.

Sworn to this 8th day of Sept., A. D. 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond. Dated this 8th day of December, 1870.

D. & T. McMAHON,
Proctors Libellant.

81 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer and exceptions of Henry Fisher, master and claimant of the North German bark Elwine Kreplin, to the libel and complaint of Max. Newman against the said bark, her tackle, apparel, and furniture, respectfully shows:

First. The claimant admits that, in the month of June, in the year one thousand eight hundred and sixty-eight, at the port of Trieste, he

hired and shipped one Abraham Martens, to serve as carpenter on board said vessel, and he avers that the said Martens was paid off and discharged, and the voyage for which he then shipped was concluded and terminated prior to the month of March, 1869. And the claimant alleges that, on or about the 2d day of April, 1869, at the port of Pillau, in the kingdom of Prussia, he hired and shipped the said Abraham Martens, to serve as carpenter on board the said bark, at the wages of 21 Prussian silver dollars per month, for a voyage under the rules, regulations and directions of the Prussian shipping laws and books of navigation, which voyage was to continue until the vessel returned to a Prussian port for winter quarters, or until the expiration of two or three years from the shipment, in case the vessel should then be in a European port.

That upon the said hiring and shipment the said Martens duly signed shipping articles for the said voyage, and bound himself by the said rules, regulations, and directions of the Prussian shipping laws and books of navigation; to which, when produced, the claimant begs leave to refer as a part of his answer, in the same manner as if copies thereof had been hereunto annexed.

82 The claimant admits the shipment of Julius Kruse, Herman Luett, Charles Rieckhoff, Albert Schroebeke, William Speitz, and Robert Tarreck, and the libellant, on board the said bark at the places, in the capacities, and for the wages in the libel alleged, but he alleges that they so shipped and went on board said vessel for the voyage hereinabove specified, and signed shipping articles for the same, and bound themselves by the said rules, regulations, and directions of the said Prussian shipping laws and books of navigation.

The claimant denies that there was any other contract or agreement of shipment between the said bark and the libellant and the persons above named than that above set forth, and he, therefore, denies the allegations in that behalf in the libel set forth.

The claimant admits that, at about the time in the libel alleged, and in pursuance of the contract of hiring hereinbefore set forth, the said seamen went on board said vessel and entered into the service of the master thereof.

Second. The claimant admits that the said vessel having taken on board a cargo, made voyages to several ports with all of said seamen and the libellant and said carpenter on board, and that she made freight, and that said mariners, said libellant, and said carpenter continued on board of and in the service of the said vessel from the time of their several hirings until the 1st day of August, 1870, but he denies that on said last mentioned or any other day or days, they were discharged from the said vessel.

Third. The claimant denies that the said seamen and the said libellant, or either of them, well and truly performed their duties on

83 board said vessel, or were obedient to his lawful commands; but, on the contrary, he avers that, on said 1st day of August, 1870, and at divers other times subsequent thereto, said libellant and said Martens, Kruse, Luett, Rieckhoff, Schroebeke, Speitz, and Tarrect, were guilty of gross insubordination and mutinous conduct, and resisted the lawful commands of the claimant, as master of said vessel, and refused to obey the same, and interfered with him in the performance of his duty, and with force and threats prevented him from performing the same, and thereafter deserted from the said vessel. That the said libellant and the said Tarrect, on several occasions, while the said vessel was lying in the port of New York, as this claimant is informed and

believes, embezzled quantities of rope and other articles therefrom, and sold the same and appropriated the proceeds thereof to their own use, and the said libellant, Martens, Kruse, Luett, Rieckhoff, Speitz, Tarrect, and Schroebeke, have been guilty of various other acts of fraud and misconduct against the said vessel and master thereof.

The claimant denies that there is due to the libellant, said Martens, Kruse, Luett, Rieckhoff, Speitz, Tarrect, and Schroebeke, or either of them, the amount in the third article of the libel alleged, or any amount whatever.

Fourth. This claimant denies that the said Martens, Kruse, Luett, Rieckhoff, Speitz, Tarrect, and Schroebeke, for a valuable consideration otherwise, ever assigned, transferred, or set over to the libellant their right, title, or interest in or to whatever wages may be due them by reason of their services alleged in the libel; and the claimant alleges that neither the said Luett, Rieckhoff, or Schroebeke, are of lawful age, and he, therefore, insists that they are thereby precluded from making a valid assignment of their alleged claims against the said bark.

84 And the claimant excepts to the maintainance of this action by the libellant, as pretended assignee of the alleged claims of Martens, Kruse, Luett, Rieckhoff, Spietz, Tarrect, and Schroebeke.

Fifth. That the voyage for which the libellant and the said seamen shipped has not been taken up, nor has the time for which they so shipped expired.

Sixth. That this honorable court has no jurisdiction of the matters contained in said libel, the said bark Elwine Kreplin being a Prussian vessel, and owned by citizens of the Kingdom of Prussia, and the libellant and the said Martens, Kruse, Luett, Riekhoff, Schroebeke, Spitz, and Tarrect being members of the crew of said vessel, and citizens of the said kingdom, and it having been enacted and agreed by the terms of a treaty between the United States of America and his Majesty, the King of Prussia, ratified on the 14th day of March, 1829, that the consul, vice-consuls, and commercial agents shall have the right as such to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessel belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captains should disturb the order or tranquility of the country, or the said consuls, vice-consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect or supported.

And the claimant prays the same advantage of the same, as if the same were separately and formally pleaded to said libel.

Seventh. That the said libellant, and the said seamen in, and by the terms of the said articles, and the rule regulating, and directions of the Prussian shipping law and books of navigation heretofore men-

85 tioned, agreed, stipulated, and bound themselves under a penalty of forfeiture of wages, not to sue or bring any action for any cause against the said vessel, or the master or owners thereof, in any court or tribunal except in those of Prussia.

Eighth. That, in the month of August, 1870, Johannes Rosing, esq., consul general of the North German Union, composed of the Kingdom of Prussia and other sovereignties, at the city of New York, heard and examined the question of difference between the libellant and said seamen and this claimant, and adjudicated upon the same, and that the said libellant and the said Martens, Kruse, Luett, Rieckhoff, Schroebeke, Speitz, and Tarrect, said seamen, appeared before the said consul

general, and presented their claim to be discharged from said vessel, and for the wages in the libel alleged to be due to them, and that the said consul general, in his capacity as such, heard and examined said claim, and after such hearing and examination adjudged that the said libellant and said seamen above named should return to said vessel, which they declined to do; and further, said consul general decided that no wages whatever were due unto them until said contract of shipment was complied with.

Wherefore the claimant prays that this honorable court would be pleased to pronounce against the said libel, and condemn the libellant in costs.

H. FISHER.

Sworn to before me this 20th day of September, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

SALOMON & BURKE,
Proct's for Claimants, 4 Wall Street, N. Y.

86 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 29th day of October, in the year of our Lord one thousand eight hundred and seventy—

Present, the Hon. Charles L. Benedict, district judge.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &C.

Cause called. Counsel ready. Hearing ordered.
Mr. McMahon appears for libellant.
Messrs. Salomon & Burke for claimant.
Counsel make statements in regard to the case.

Evidence for libellant:

Max. Newman ..... sworn and examined.
Jacob G. Winans ..... sworn and examined.

Hearing suspended until November 9th, 1870.

November 9th, 1870. Hearing resumed.

Evidence for libellant continued:

Deposition of Julius Kruse ..... read.
Deposition of F. H. Luett ..... read.
Deposition of Cha's Tarrect ..... read.
Deposition of Cha's Rieckhoff ..... read.
Deposition of John F. Schroebeke ..... read.
Abram Martens ..... sworn and examined.
Max. Newman ..... recalled and examined.

Libellant rests, reserving right to call one other witness.

Evidence for claimant:

87 Isaac Romer ..... sworn and examined.
Charles Schroeder ..... sworn and examined.

Hearing suspended until November 10th, 1870.

November 10th, 1870. Hearing resumed.

Evidence for claimant:

William Zach ..... sworn and examined.
Rudolph Dulon ..... sworn as interpreter.
Thomas Garrett ..... sworn and examined.
William Zach ..... recalled and examined.

Hearing suspended until November 11th, 1870.

At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 11th day of November, in the year of our Lord one thousand eight hundred and seventy.

Present, the Honorable Charles L. Benedict, district judge.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN, &C.

Hearing resumed.

Henry Fisher ..... sworn and examined.
Henry Schroebeke. ..... sworn and examined by interpreter.
Henry Fisher ..... recalled and examined.
Henry Schroebeke ..... recalled and examined by interpreter.

Claimant rests.

88 Max. Newman recalled and examined for libellant.
Henry Fisher recalled and examined for respondent.
Testimony closed.
Exhibits offered in evidence by libellant, marked.
Exhibits offered in evidence by respondent, marked.
Cause to be summed up Nov. 19th, 1870, at 10 a. m.

U. S. district court, E. D. of New York, in admiralty.

MAX. NEWMAN
vs.
BARK ELWINE KREPLIN.

I stipulate, in the event of this court coming to the conclusion that the seamen of the bark Kreplin are entitled to recover their wages, or any part of the same assigned to me, that this court may make any order they deem proper for the protection of the men, in order that they may get their wages, either by amendment or otherwise.

Brooklyn, November 19th, 1870.

MAX. NEWMAN.

(Indorsed:) In admiralty. U. S. district court, E. D. of New York. Max. Newman vs. Bark Kreplin. Stipulation. D. & T. McMahon, proctors for libellants.

89 United States district court, eastern district of New York.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN.

OCTOBER 29TH, 1870.

D. & T. McMahon, proctors for libellant.

Salomon & Burke, proctors for claimant.
Libel read by Mr. McMahon. Answer read by Mr. Salomon.

MAX. NEWMAN, called and sworn:

I was mate of the bark; shipped at Pillau, in Prussia. I am a Prussian; this is a Prussian bark. I shipped on June 13th, 1869, and signed articles; this is a copy of the articles, (Ex. "A," C. L. B.) I entered on the service on the 13th of June, 1869. All the men who have assigned their claims to me were then on board. Speitz and Tarrect shipped with me. Martens, the carpenter, was on board. Kruse, Luett, Reickhoff, and Albert Schroebeke were also on board. I was a year on board when I arrived in New York. We went from Billau to Sweden, and then to Glouchester, and thence to Newport, in England, then to Marseilles, in France, and thence to New York. Arrived in New York about the 23d of June last. All the men I have named were on board at that time. In my opinion, they performed their duty well. I did my duty well.
We had a cargo when we arrived in New York, after discharging
90 which, the bark went to Hunter's Point. She was discharged about the last of June. We were arranging to take in cargo at Hunter's Point for Prussia, when orders came to stop taking in cargo; the cargo was to be oil. That night Luett, Reickhoff, and Kruse went to the captain, and said they were willing to go to consul to be discharged, to go home to the army. The captain said he was willing, so soon as he was certain that the ship was to be laid up. He said he was sure that war had broke out. We lay at Hunter's Point about ten days, and then went to Stapleton, Staten Island. We took in no cargo at Hunter's Point. The captain said he was going to lay the ship up at Staten Island. News of the war had then arrived. As soon as the ship was discharged, I complained to the consul about the captain's conduct to me, and got a letter from the consul in reply. That complaint was about a difficulty between me and the captain alone. The bark lay at Stapleton up to the 20th of July. There was no dispute or difficulty between the captain and the crew before the 1st of August, the day when he beat the boy, Schroebeke. The men were scrubbing the decks, and when they heard the boy crying, they hove down their tools, and went aft. Shortly after they came out of the cabin, and the captain with him. The captain asked me if I hadn't the men at work. I said, "Yes, of course." Then he said, "What made them come in the cabin," and that he knew very well that I was at the head of the plot. The men then said to the captain, that they were going to the consul to speak to him about the provisions. Luett and Rieckhoff said that he had promised to let them go, when the ship was laid up, so as to go home, and they were going to see the consul about that. All complained about the provisions, and said they would see the consul about them, especially the carpenter. The captain said Luett and Martens, the carpenter, could go. He said nothing to
me, and I said nothing about going to the consul. The men then
91 said if he gave permission to them, they would go altogether; the captain then turned around and went into the cabin, without saying anything, except he was swearing. After breakfast all but me went ashore. Shortly after they left, the captain came on board; when he came his wife told him that I had told the carpenter to send a policeman on board; so I went up and said to him that that was not true; the captain told me to stop my mouth. I said I would go to the consul too, if he carried on with me like this. The captain said, "For my part, you can go." I put my coat on and went ashore to go to the consul to complain about the captain's conduct against me for a second time. I

went down to the ferry at Stapleton, and was there for about ten minutes, waiting for the boat for New York; the captain and two men came in there, and one of the men requested me to come to the judge. I said I was waiting for the boat. He said it would only take ten minutes, that the captain had made complaint against me. I went to the 8th ward police court in Stapleton, and there I found the whole crew. The captain said to the judge he was going to have us put in prison for desertion. The judge asked me what I had to say against it. I told him what had happened on board that morning, as I have narrated it here, but with more particularity. The judge said he must have us taken to a U. S. court, as he could do nothing about it. Then the whole eight of us were taken there by a detective and a policeman, and we were locked up there till 4 p. m. that day in cells. At 4 p. m. they gave us a room, but detained us in the house; we were detained until next morning. They locked me up; the other seven they left in this room. In the afternoon they had warrants for our arrest, and took us all to Richmond jail. I was in jail there until August 11th, with Reickhoff, Tarrect, and Schroebeke. The carpenter, Kruse, Luett, and Speitz
92 were there until the 12th of August. On the 11th two policemen carried me, Reickhoff, Tarrect, and Schroebeke to the North German Union consul. The consul asked who sent us there, and ordered the policemen to take us back. We waited for the captain till about the time the consulate was to be shut up, and the consul then told us to go on board, and speak civil'y to the captain, and all would be right. I said, if that was the sort of justice he administered for sailors, I would rather go back to jail. Consul said to me I could do what I liked, but I should let the other men do what they liked. He then ordered the policeman to let us go; he had nothing to do with us any more. I saw, while I was in the consul's, men signing articles for our ship. I went back to Richmond jail that night, of my own accord, and not in custody. The next day I went to New York, and waited at the ferry till the other men came, at half past one in the afternoon, and then the whole eight went up to the consul's again. The carpenter complained to the consul of his impertinence; consul said, you had better go on board, and talk civil'y to the captain, and he was sure he would settle with him. The captain was not there that afternoon. Consul told us to go on board, and talk with the captain. I asked the captain why he had shipped another mate for the bark yesterday. The captain said he didn't know anything about it; it was a personal matter between me and consul, the crew told consul they had no money to go back to the ship; consul said he couldn't help it. Then I, and the carpenter, and Luett went to the ship to talk to the captain. The captain told me that he had told the consul he was willing to pay me off, and asked me to bring my book for him to set down some money I had drawn; and I packed my things, and went ashore. The captain said it was queer for consul to say it was a personal matter to ship another mate. The carpenter and Luett also talked with the captain.
I didn't have any conversation after that. They went ashore with
93 me, and the captain didn't stop them; I never saw the captain after that. The next day all the crew, except the carpenter, were at the consul's. I saw the captain beating the boy with a rope's end; the boy was on the floor. It was a small rope.

(Libellants offer to prove that the provisions were bad. Ruled out as irrelevant.)

Amount due on the 12th of August, $173, in currency. I took an as-

signment from these men of their claims. This is the assignment, "Ex. B." The bark is still laid up at Stapleton.

Cross-examination:

I am a subject of Prussia. I have a book of navigation; this is it. I was mustered on the 22d of June, 1869, as the book shows; been seaman since 1858. This was my third voyage as mate. My residence is Straltzsim, Prussia. I had frequent difficulty with the captain. The first complaint I made to consul was before the ship went to Hunter's Point. The conversation of the men about the military service was after the ship was at Hunter's Point. The ship went to Hunter's Point about the 18th of July, and to Stapleton about the 24th of July. The three men went off at Hunter's Point separately. Rieckhoff went first, and he asked the captain to pay him off, and said he wanted to go home. The captain said he would pay him off as soon as the ship was at Staten Island; he was sure there was war. The second man that went to the captain was Luett. He went as soon as Rieckhoff went back, and he asked if he wouldn't pay him off; that he had to serve his time, and wanted to be paid. The captain said he would do it as soon as he was sure there was war and the ship was to be laid up. I didn't
94 hear the conversation with Kruse. I have heard what I stated, and I heard nothing more. What the captain said was that, if the war continued, he could go to the consul and see about it, or something like that. I had never heard the men say they were going to leave anyway, because they could get better wages. On the 1st of August, when the boy was beat, and the talk was about going to consul, the captain said Luett could go; and when all said they were going, and the captain then said the carpenter could go, and told the others that they couldn't go. The carpenter was at the head of the men when they went into the cabin. I did not hear him speak improperly. When the row was over the captain went ashore after breakfast; and at 8 a. m., when I went forward to turn the men to, they said they were going up to the consul's. I said it was better for them to wait till the captain came back. They said he couldn't refuse, couldn't stop them from going to the consul's, as they had a right to do it. All I said was that it was better for them to wait until he came back. They were all there, but the cabin-boy. The men went ashore, and the captain came back in about fifteen minutes. Mr. Schroeder was with him. I told the captain that the men had gone ashore. I didn't tell him the men had gone to the consul's. When he spoke to me, as he did, I said, I am going, too; I didn't say I was going to consul's. Captain said "For my part, you can go." I was angry, and I left. When I was at the consul's, the vice-consul was acting. I asked him why I was put in prison; he showed a paper, and said, on the complaint of the captain. I said he should hear witnesses. The men were the witnesses, and he said he had nothing to do with it; that the captain had said so and so, and then he turned away; he had no time to talk about it. The men were going to explain, but they were not heard; he had not time. I told him he could send me back to
95 jail rather than go back to the ship. Next morning I was at consul's, and the vice-consul was then acting as day before. He persuaded us to go back to see the captain. He said he was sure the captain was willing to pay us off if we would go on board and talk civil'y to him. He didn't tell us that we were deserters, and liable to lose our wages, and that we must go back. He didn't tell us we would get into trouble if we didn't go back. I didn't go back to the ship.

Re-direct:

I was alone when the men told me they were going to the consul; the captain was ashore. When I told the captain the men were gone ashore, the captain said "Never mind, let them go."

Q. What did you hear the captain tell his wife about the men?

(Objected to. Received.)

A. He said he wouldn't keep all the men, but would let some of them go. This was at Hunter's Point, soon after the three men had requested to go. He was saying that he wouldn't need all the men, and such things. None of us were examined under oath by the consul. The charge of the master was not read to me, or to the other men, in my presence. I asked to read the papers the vice-consul had when he said the master had made charges; he wouldn't give them to me. That was the day after I came out of prison.

Re-cross-examination:

It was amidships by the gangway when the captain said, "Never mind, let them go." I said, "The crew is gone;" he said, then, "Let them go.'

96 JACOB G. WINANS.

Direct examination.

I was sheriff of Richmond County in August last, and had eight men in my custody—four for ten days, and four for eleven days. I have my commitments.

(Commitments objected to.)

These are the commitments. I released them in pursuance of an order of a police justice.

(Commitments in evidence.)

Releases given me in all cases. These are the orders.

(Releases in evidence.)

Q. What was your charges?

(Objected to. Received.)

A. My charges were $96 for the eight men. I was paid by the consul of the North German Union.

Suspended to 9th of November.

Deposition of Julius Kruse read for libellant.
Deposition of F. H. Luett read for libellant.
Deposition of Charles Tarrect, read for libellant.
Deposition of William Speitz, read for libellant.
Deposition of Charles Reickhoff, read for libellant.
Deposition of John F. Schroebeke, read for libellant.

ABRAHAM MARTENS called and sworn for libellant.

Direct examination:

Was carpenter on this vessel. I shipped on the 8th of June, 1868, at Barth, Prussia. The ship was then at Trieste. I was shipped
97 by captain's father and one of the owners. I got a paper from the captain's father and the owner. I lost it, and don't know where it is. I had it with other letters in a box which I left in a bunk in the vessel; when I went back, I couldn't find the paper. I have not got the paper. I never asked the captain for the paper. I don't know who has it. I saw it a couple of days before I was locked up, but not after that; all the crew knew I had it. I went from Barth to Trieste.

I was to be carpenter on the vessel. I signed articles in Trieste. I shipped in Barth, and went to Trieste, and was there shipped before consul, about eight days after I shipped in Barth. Again signed articles at Pillau, when the last crew was shipped, a couple of days after. That was seventeen months ago, and about nine or ten months after I had signed articles in Trieste. I had been on the vessel all the time meanwhile. I had conversation with the master when I signed articles at Pillau.

Q. What was the contents of the paper given you by the captain's father in Barth?

(Objected to. Question received. State subject—claimant's examiners as to loss of paper.)

A. I got the paper; about so long, it was. I did not show it to the captain, nor to the mustering officer. I said nothing. The captain's father said, "I'll write a letter to my son, and tell him about it." Mustered in at Pillau on the 16th of March, 1869; it might be the 2d of April, as my book says. I kept the paper in my chest; I never used it. The chest was locked, but not locked at sea. When I went to prison, I left my chest locked, and when I came back I found it locked. I saw the paper in a cigar-box, with other papers, and that box was in my chest; I took the cigar box out and put it in a bunk, and when I came back, I found the cigar box had been laying in the bunk. I
98 came back about eight or twelve days after. Besides this paper were letters and a receipt book. When I found the cigar box in the bunk, I threw it into my chest, and took it in the chest to my boarding-house. A few days after I got to the boarding-house, I looked into the box, and found everything in it but this paper. I went for the paper to take it to the lawyer.

(Objection to evidence of contents of paper.)

Direct resumed:

A. The crew knew of the paper; Kruse and Luett read the paper; the mate knew I had it; the mate saw it; the captain talked about it when I came to Trieste.

Q. What did he say?

(Objected to.)

A. The captain said that he had made everything so particular that I could get free; that was all. The mate saw it at sea; I had it in my hand. I had my box out on a table, and was looking them over. The mate asked me what it was. I said it was a letter I had from the captain's father and owner; I gave it to him in his hand, and he gave it back.

Suspended.

MAX. NEWMAN called as to paper.

I saw the paper spoken of by the former witness. I was by the house at sea, and asked the carpenter about it, and he handed it to me; it was as large as this sheet here, but blue paper. I read it, but cannot recollect all of it; it was signed by Henry Fisher, the captain's father,
99 and by J. N. Rodbertus, one of the head owners; it was signed and sealed by both of them; it had no date. It was four or five months ago that I saw it—shortly before I got in.

(Contents objected to.)

It read: "We certify to the agreement with the carpenter, that he could come clear in any port, and that he shipped for $20 00 a month." I then asked the carpenter how he told me had $21, when the

paper read $20; and he told me that they had promised to write to tell the captain to give him the other dollar, which he demanded; and so the captain gave him the extra dollar.

Suspended.

Cross-examined:

The seal was red wax, and underneath each name, the pay was given in signs. The seals were not alike. No date to the paper; it commenced, I hereby certify that the carpenter, Abraham Martens, can leave at any port, and we agree to the agreement he has made with us, that he is to have $20. This is it, as far as I can now recollect. I don't recollect the words; I understood that it referred to it—another agreement.

ABRAHAM MARTENS recalled:

Q. What was the contents of the last paper?

(Objected to.)

A. There was in it, that I could leave in any port, and that they gave me $20 a month, and I could have $21 a month; it was signed by
100 the captain's father and the owner. I hesitated at first to go in the ship, as I had heard about the captain; and I saw the captain's father and the owner two other times before I finally agreed. I got from them $20 advance. They paid my expenses to Trieste; I was living in that town. The captain's father and the owner lived there.

(Motion to produce articles signed in Trieste.)

I don't know what was in the articles signed in Trieste. At Pillau I asked the captain if I had to ship again. He said, "No; only write my name." I did so.

(Objected to.)

I didn't read the articles. I was already on board the vessel, and kept on board until I was imprisoned in Staten Island, and did my duty as carpenter. When we arrived there the vessel first went to pier 64, East River; we arrived about the 21st or 22d of June last; we discharged at pier 64; the vessel was then taken to Jersey Flats, we were about 10 or 12 days discharging cargo at pier 64; we were waiting for cargo at Jersey Flats; thence we went to Hunter's Point, after lying 10 or 11 days at Jersey Flats; at Hunter's Point we were to load with oil; we didn't load because of war between France and Prussia, and kept lying at Hunter's Point 10 or 12 days; she went to Staten Island, because she couldn't do anything on account of the war. I know that Herman Luett, Rieckhoff, and Julius Kruse went to the captain, and said they wanted to go home because of the war; I was forward, and couldn't hear what was said. After we got to Staten Island we lay there some days; the boy was crying in the cabin, and I went in, and the crew followed me; I asked the captain why he struck the boy, and told
101 him to let the boy go, and he did, and we went out of the cabin to wash; I didn't know the crew were following me; just as we went out and got to work, cleaning the decks, the captain came out, and we had a talk; I asked to go and see the consul; he said, "You can't;" another asked to go and see the consul, and he said, "Yes, you can go;" and I again asked him, and he says, "Well, go then." I wanted to see the consul about several matters; the other man he told might go was Herman Luett. Luett said to captain he would tell consul all about the bad treatment; after he told me I could go, we finished the deck, and then had breakfast; and then I washed up and went to see consul; all the crew went, and we were stopped after we got a little way, and taken

to a police station; I went there to complain about the beating of the boy; the captain of police told me to go to the judge, and we all went there, and Captain Fisher came there, and counted us and went away, and in ten minutes the mate came; after awhile the captain came again, and the judge said he couldn't do anything; the captain said he wanted us arrested for mutiny; we told, in the captain's presence, we only wanted to see the consul, when the judge said he could do nothing for us, and we had better go back to the police station; we went, and were there locked up; the captain of police went over to New York; we were kept there all night; the next day the captain came with papers, and we were taken to Richmond jail, and kept there till August 12th; on the 11th of August the police took out four men; I had to wait another day; the next day the police took the other four out, and brought us on board the ship, and said, "Go where you like." The captain was there, and told me I could go to the consul if I wanted to. Eight of us then went to the consul; four left the ship; we found the other four at the consul's office. The consul told us we had better go aboard, and talk civil'y,
102 and the captain would pay us off, and that he had no time to examine like a court; go to the captain, and he will pay you off. I said I have no money, and consul said he couldn't furnish the ferriage, so we put all our money together, and there was enough for three to go, so I, the mate, and Herman Luett went down to the ship, and told the captain what consul said; the captain said he would be at the consul's at eleven o'clock to-morrow. We then went to New York again. The next day all hands went to the consul's office; consul asked if we had seen the captain, and we told him, and he said, "Go again, and the captain will pay you off, and take expenses from wages." I didn't agree to that; consul said he had no time, and, "You had better go to the captain, and he'll pay you off." I told him, "I'll go to a lawyer." When we left to go to consul, we left all our things on board the vessel. I saw Schroebeke punished in the cabin; the captain had him down, striking him with a rope's end; the boy cried, not so very hard; I saw his arms and body all swelled up; his skin was blue and every color.

Cross-examined:

I am a Prussian subject. This is my book of navigation, given me by the authorities when mustered in; it has my signature; it shows that I was mustered in at Trieste, before consul, on the 16th of June, 1868. The articles were not read to me in Trieste; the voyage was from Trieste, wherever the ship was to go. The ship arrived at Pillau on the 19th of December, 1868; she lay up there till April. At Pillau I wanted to be mustered out, but the captain said, "You will have to stay." The captain paid me some, but not all my wages, at Pillau, before I signed the new muster-roll the 2d of April; the new muster-roll (articles)
103 were not read to me; the captain's father wrote the last paper in his house, and then we went together to the owner; the captain's father signed it first in his house, and then we went to the owner, and the owner signed it; the seal was put on in the captain's father's house; it was a red-wax seal, and about as large as a penny. The boy was beat about 7½ a. m., and the crew left about 8¼ a. m. I was on deck scrubbing decks amidships, when the boy was beat; didn't see him strike the boy till I was in the cabin; he struck him as I came in; I said, "What for you strike the boy?" he said, "None of your business." I said, "You had better leave the boy alone;" the crew all came after me. After we came out we had began to scrub the decks again, when the captain came and asked us what we came in the cabin for, and we said, "What do you

paper read $20; and he told me that they had promised to write to tell the captain to give him the other dollar, which he demanded; and so the captain gave him the extra dollar.

Suspended.

Cross-examined:

The seal was red wax, and underneath each name, the pay was given in signs. The seals were not alike. No date to the paper; it commenced, I hereby certify that the carpenter, Abraham Martens, can leave at any port, and we agree to the agreement he has made with us, that he is to have $20. This is it, as far as I can now recollect. I don't recollect the words; I understood that it referred to it—another agreement.

ABRAHAM MARTENS recalled:

Q. What was the contents of the last paper?

(Objected to.)

A. There was in it, that I could leave in any port, and that they gave me $20 a month, and I could have $21 a month; it was signed by
100 the captain's father and the owner. I hesitated at first to go in the ship, as I had heard about the captain; and I saw the captain's father and the owner two other times before I finally agreed. I got from them $20 advance. They paid my expenses to Trieste; I was living in that town. The captain's father and the owner lived there.

(Motion to produce articles signed in Trieste.)

I don't know what was in the articles signed in Trieste. At Pillau I asked the captain if I had to ship again. He said, "No; only write my name." I did so.

(Objected to.)

I didn't read the articles. I was already on board the vessel, and kept on board until I was imprisoned in Staten Island, and did my duty as carpenter. When we arrived there the vessel first went to pier 64, East River; we arrived about the 21st or 22d of June last; we discharged at pier 64; the vessel was then taken to Jersey Flats, we were about 10 or 12 days discharging cargo at pier 64; we were waiting for cargo at Jersey Flats; thence we went to Hunter's Point, after lying 10 or 11 days at Jersey Flats; at Hunter's Point we were to load with oil; we didn't load because of war between France and Prussia, and kept lying at Hunter's Point 10 or 12 days; she went to Staten Island, because she couldn't do anything on account of the war. I know that Herman Luett, Rieckhoff, and Julius Kruse went to the captain, and said they wanted to go home because of the war; I was forward, and couldn't hear what was said. After we got to Staten Island we lay there some days; the boy was crying in the cabin, and I went in, and the crew followed me; I asked the captain why he struck the boy, and told
101 him to let the boy go, and he did, and we went out of the cabin to wash; I didn't know the crew were following me; just as we went out and got to work, cleaning the decks, the captain came out, and we had a talk; I asked to go and see the consul; he said, "You can't;" another asked to go and see the consul, and he said, "Yes, you can go;" and I again asked him, and he says, "Well, go then." I wanted to see the consul about several matters; the other man he told might go was Herman Luett. Luett said to captain he would tell consul all about the bad treatment; after he told me I could go, we finished the deck, and then had breakfast; and then I washed up and went to see consul; all the crew went, and we were stopped after we got a little way, and taken

to a police station; I went there to complain about the beating of the boy; the captain of police told me to go to the judge, and we all went there, and Captain Fisher came there, and counted us and went away, and in ten minutes the mate came; after awhile the captain came again, and the judge said he couldn't do anything; the captain said he wanted us arrested for mutiny; we told, in the captain's presence, we only wanted to see the consul, when the judge said he could do nothing for us, and we had better go back to the police station; we went, and were there locked up; the captain of police went over to New York; we were kept there all night; the next day the captain came with papers, and we were taken to Richmond jail, and kept there till August 12th; on the 11th of August the police took out four men; I had to wait another day; the next day the police took the other four out, and brought us on board the ship, and said, "Go where you like." The captain was there, and told me I could go to the consul if I wanted to. Eight of us then went to the consul; four left the ship; we found the other four at the consul's office. The consul told us we had better go aboard, and talk civil'y,
102 and the captain would pay us off, and that he had no time to examine like a court; go to the captain, and he will pay you off. I said I have no money, and consul said he couldn't furnish the ferriage, so we put all our money together, and there was enough for three to go, so I, the mate, and Herman Luett went down to the ship, and told the captain what consul said; the captain said he would be at the consul's at eleven o'clock to-morrow. We then went to New York again. The next day all hands went to the consul's office; consul asked if we had seen the captain, and we told him, and he said, "Go again, and the captain will pay you off, and take expenses from wages." I didn't agree to that; consul said he had no time, and, "You had better go to the captain, and he'll pay you off." I told him, "I'll go to a lawyer." When we left to go to consul, we left all our things on board the vessel. I saw Schroebeke punished in the cabin; the captain had him down, striking him with a rope's end; the boy cried, not so very hard; I saw his arms and body all swelled up; his skin was blue and every color.

Cross-examined:

I am a Prussian subject. This is my book of navigation, given me by the authorities when mustered in; it has my signature; it shows that I was mustered in at Trieste, before consul, on the 16th of June, 1868. The articles were not read to me in Trieste; the voyage was from Trieste, wherever the ship was to go. The ship arrived at Pillau on the 19th of December, 1868; she lay up there till April. At Pillau I wanted to be mustered out, but the captain said, "You will have to stay." The captain paid me some, but not all my wages, at Pillau, before I signed the new muster-roll the 2d of April; the new muster-roll (articles)
103 were not read to me; the captain's father wrote the last paper in his house, and then we went together to the owner; the captain's father signed it first in his house, and then we went to the owner, and the owner signed it; the seal was put on in the captain's father's house; it was a red-wax seal, and about as large as a penny. The boy was beat about 7½ a. m., and the crew left about 8¼ a. m. I was on deck scrubbing decks amidships, when the boy was beat; didn't see him strike the boy till I was in the cabin; he struck him as I came in; I said, "What for you strike the boy?" he said, "None of your business." I said, "You had better leave the boy alone;" the crew all came after me. After we came out we had began to scrub the decks again, when the captain came and asked us what we came in the cabin for, and we said, "What do you

strike the boy for?" we stopped work as the captain came out, and he commenced the row again with us; the captain was ashore when we left; we told the policeman that we wanted our rights; I didn't say I wanted to leave the ship; didn't hear the others say that; the vice-consul didn't tell us we were deserting, that I heard; we left Richmond jail on the 12th; a policeman brought us to the ship, and the captain asked me if we wanted to see the consul, and said we could go, but would have to hurry up; we went up that day, and came back to the ship; when we came back, the captain didn't tell us to go to work; the next day the consul again told us to go to the ship, and the captain would pay us off; some of us then went to a lawyer; I preferred that I would go to a lawyer, remarking that "I have not received my wages, but would get it yet."

Redirect:

104 When I went on board from the jail, I found mate and boatswain on board; the mate was at work; the vessel is lying there still.

Recross-examination:

The man told us he was mate, and I heard at the consul's office the runner and the vice-consul talked about a new mate.

Copy articles & assignment in evidence.

Rest. All but police justice rest.

ISAAC ROMER called and sworn for claimant.

Direct examination:

Reside at Staten Island; am detective for the police. On the 1st of August, I first saw two of the crew—the carpenter and boy—in station-house, and the rest around the police court; the carpenter and boy were at the station-house. I had a warrant to arrest seven of the crew, and I did so. I got the warrant the day they left the ship, and I produced them at the court about 9½—at the police court. The captain said they had deserted; the carpenter said he wanted the captain arrested for beating the boy. The captain came about then and said all hands came into the cabin, and had been mutinying; justice said they had better go to court; the captain asked him if he couldn't hold the men till he could see the consul. I didn't hear the crew say anything about going to consul; they said they had got tired and wanted to leave the ship. They were in good temper. They said the captain's wife was captain and not him; they appeared about something; some of them said they wouldn't stay aboard, and wouldn't work on board. I don't understand German.

105 Cross-examination:

I took them on Police Justice Garret's warrant, on the 1st of August; I took them to jail on Judge Garret's commitment; it was for safe-keeping and not for examination. I took the boy and the carpenter to the ship and the others followed me, and said they would go and see; it was the morning after they came out of jail. I saw the captain aboard then; left them there. I met the men in a lager bier saloon and asked them to go down, and that was the way they came to go. I did not have them in custody. It was while going down that they said they wouldn't stay with the captain; it was spoken in English; I can't say which one spoke it. That was all I heard that day. I was at the consul's the day the first four were taken out, and the day the carpenter and the other three were taken out.

Redirect.

The men said the first day, that they would never go in the ship any more, only to get their things, and that they wanted to go away from her. I asked them if they wouldn't lose their pay, and they said they didn't mind that.

CHARLES SCHROEDER called and sworn for claimant.

Direct examination:

I reside at Staten Island, and know the capatin of the bark; I am a ship-chandler. On the 1st of August I met the captain, and went with him to the ship, at about 8½ a. m. The mate was resting on the rail. The mate said the crew had gone ashore. The captain said nothing, but went into the cabin. Afterwards, when the captain came out, the mate told him he wanted to go too. The captain said, "Well, I can't hold you." The mate looked kind of angry.

106 Cross-examination:

I heard no talk between the captain and mate before the mate said, "I want to go, too," after the captain came out from the cabin.

NOVEMBER 10TH.

WILLIAM ZACH called and sworn for claimant.

Direct examination by interpreter:

I reside in New York, and am vice-consul of the North German Union, at the city of New York; been in the consulate since 1865; I am a jurist by profession, in Prussia, and know the laws of Prussia.

Q. State what relation the Kingdom of Prussia has to the government of the North German Union, in relation to the appointment and powers of foreign consuls appointed by the North German Union.

(Objected to. Taken subject to objection.)

The law under which the consuls hold their appointments states the several governments separately, as for instance, Prussia, Saxony, &c., and in this law authority is given them to represent the interests of each of the governments, and to communicate with them separately; and in pursuance thereof, they have assumed the places of the former consuls, and they are, therefore, Prussian consuls, Saxon consuls, &c., &c. I know Captain Fisher of this bark. He made complaint at the office of the consul general, on the first day of August, of which a protocol was made; the secretary of the consul general took the protocol. It was taken in my presence, but without my knowing accurately what was stated, having been informed of it beforehand by the captain.

107 I do not know whether the consul general was present; but I know that I had some conversation with him after the taking of the protocol, concerning the measures which were to be taken in pursuance of the complaint. The consul is Dr. Roesing; I am his representative in case he is not present; he is the chief of the office, and I am an official in the office. The protocol was taken by my order; I have it; here it is.

(Protocol read.)

After consultation between me and the consul-general, a requisition to the judge having jurisdiction, under art. 10, of treaty of May 1st, 1828, was given to the captain; in addition, I only remember that after some time, the captain returned to the consulate and demanded the release of the men, but I was not then present. I examined the case afterwards, at the time the people were released from jail and came up and

complained of the captain; this was after the 11th of August. I believe all the crew came; certainly, the mate and carpenter. I remember clearly that the men complained of unjust imprisonment. I know that I inquired of them what they had done to cause their arrest, and they admitted that they had left the vessel against the will of the captain; at the same time they complained of the captain, on account of many things. I told the men that they had acted contrary to law in leaving the vessel without the captain's consent, and that they had forfeited their wages earned up to that time, and advised them to return to the vessel, to ask the captain's pardon, and particularly to agree with him as regards the wages, as he had the right to retain the wages; and I added that I, myself, would speak to the captain, and see that an agreement was brought about. The first time the crew went away, and when they came the second time, I remember asking them if they had done as I had told them, and seen the captain. Some one of them said no. I called
108 their attention to the fact that they were not permitted to employ a lawyer and bring suit, as the decision was with the consul. Nothing further occurred, as far as I remember. The men did not return to the consulate. I attended to this, because I was authorized, in all such cases, to do so, by the consul general.

Cross-examination:

I have the appointment of vice-consul of the North German Union. I received it in September, 1868, from the Council of the Union. I have no exequatur from the Secretary of State. I received no appointment as vice-consul from the King of Prussia. Dr. Roesing, the consul, is appointed by the Council of the Union; he was appointed in June, 1868, I believe. He has an exequatur from the Secretary of State, received at the same time. He has no appointment from the King of Prussia. There is a treaty between the North German Union and the United States. I did not bring these men face to face with the captain. No witnesses were examined when the parties were present. No adjudication was made in writing; only a memorandum was made. It was noted on the protocol as follows: "A requisition has been made and given to the captian, to be given to court." No other adjudication was made. This memorandum was made in the absence of the men. I never told the men I had no time to attend to their case. Dr. Roesing was never brought in personal com'unication with these men, nor with any of the witnesses; I can't remember speaking to the captain to pay the men; it was impossible for me to have done so. I can't say what man admitted having left the vessel, nor can I give the words used. I spoke with nearly every man. The spoke altogether. The men
109 made no deposition in writing. I only advised them, they having admitted having left the ship without the consent of the master. I did not take the statements of the men in writing. I can't name the several complaints of the men, but they were of no consequence whatever. I saw that they searched for a reason, and their complaint concerning the imprisonment was of no consequence, as they admitted having left the vessel without consent of the master, and were deserters.

(Objected to.)

They said "yes," in reply to my charge that they had left the vessel against the will of the master; I can't say which said yes; they said yes, altogether. They did not say that they left the vessel to see the consul. I heard nothing of their having lett the vessel to see the consul.

Redirect:

Delegates from the States of the North German Union form the Council of the Union, and the appointment is made by the president of the Council, and communicated to the Council. The King of Prussia is the President of the Council, and the appointment is from the President and not from the Council. The chancellor signs the commissions of all but the heads of the consulates. By the Prussian law it is not necessary that the men be brought face to face with the master, or to make the complaint under oath, or to examine witnesses. The mode of investigating cases of desertion in Prussia is: The captain is obliged to enter the case in his journal, and this journal is submitted to the court,
110 and must be admitted as evidence. In our office the practice in regard to complaints of desertion is, (objected to,) we make a protocol; examine the muster-roll to see whether it is properly prepared, and then we issue a requisition to the proper judge. When the men are arrested they have the right to complain to us of the arrest. We examine their reasons and decide whether they are deserters or no, and whether they are to remain in prison or not.

Claimant suspended to take testimony of Judge Garret for libellant.

THOMAS GARRET called and sworn for libellant.

Direct examination:

August last I was justice of the peace; elected police justice for the village of Edgewater. I recollect this crew. On or about the 1st day of August, the captain and men came into my court-room; the men were brought by the officer. I stated that I thought I had no jurisdiction. The captain came back and said they were deserters, and asked if the officer could take charge of them. I told him yes. The captain then made a complaint against them for desertion, and the office detained them till the next day, when a requisition came from the consul, and I committed them to the jail. I did not hear the men say that they wanted to go to consul. The men did not ask me to take the complaint against the captain for beating the boy. I told the officer if he detained the men he must do it on his own responsibility. The captain made a complaint before me by affidavit of desertion, on which I issued a warrant to arrest all the men; that warrant and affidavit I have
111 tried to find, but can't. Under that warrant the men were held till the requisition came down. I put the men in charge of the officer, at his own risk, an hour or two before I issued the warrant. The captain stated that the men were mutineers and deserters; that they had chased him into his cabin, and threatened him with violence; I only took down that they were deserters from his bark.

Cross-examined:

I have looked for the requisition and can't find it. It was directed to any marshal or magistrate of the United States, and required them to take cognizance of the offence named, which was desertion. I received it the day after the men were locked up. I at once committed them to the county jail, and kept them there till the consul sent for them. When the captain first came he complained that the men were deserters, and also had been mutinying. I have no recollection of his having complained of their leaving the ship, but he said they were all deserters from the ship when he first came in.

Redirect:

When the captain and men first came in I think the mate was with them; I am not certain. I think the requisition was signed by Roesing; I think that was the name.

WILLIAM ZACH recalled.

The requisition was issued by the consul general, himself; it was upon a printed form.

112 Cross-examination:

I have no memorandum of the statement of the men.

Suspended to November 11.

WILLIAM ZACH, continued.

I have one of the forms of requisition which I had filled up, as the one sent in this case was, as nearly as I can remember it.

(Copy in evidence.)

I do not remember how the requisition was addressed, or whether it was addressed as this copy reads. (The appointment of William Zach, as vice-consul, and of Dr. Roesing, as consul general, also the exequater of Dr. Roesing, as consul general of the N. German Confederation, dated July 24th, 1868, were given in evidence.)

HENRY FISHER, called and sworn for the claimants.

Direct examination:

I am the master of the bark, and arrived in the port of New York on the 15th of June, 1870. This is the muster-roll, and ship's articles of my ship. (The articles in evidence.)

When a seaman is shipped, every one is furnished with a book of navigation containing the date of the shipment; these eight books are the navigation-books of this crew.

(Books in evidence, with translation of parts.)

113 These books were given me by the mustering authority when the men were shipped, except the mate's, which he now produces in court. The books were handed to me by the crew when I engaged them. I gave them to the mustering officer when the men were shipped, and he gave them back to me, to be kept till the men were again discharged. I did not keep the mate's book.

(Translation of part of the books in evidence.)

After I arrived in New York, on August 1st, I thought the boy was saucy, and I took him by the ear and found a small rope to punish him with. The boy began to cry out before I had struck him with the rope, and just as I struck him the first time, the door opened and the whole crew came into the cabin. The mate was with them; he was just outside the door with two or three, and the rest were inside the door. Martens and others said, "What is the matter; why do you strike the boy? You had better leave him alone." I asked them why they were in the cabin, and got answer from most all of them that they came to see what the matter was, because they heard the boy crying. I ordered them out, but they didn't go out at the first order, and I told them again, and then they went on deck. They went about midships, and stood there together, the mate among them. I soon went out on deck to the crew, and asked the mate if he hadn't the crew at work, and why they came into the cabin. He told me yes, the crew were working, but when they heard the boy crying they all knocked off, and went in. I saw the mate didn't order the men to their work again, and they were

all grumbling and noisy about the boy. I told them to be quiet, but they didn't obey; then Speitz asked me if he could see the consul. I told him yes, you shall see the consul. Then they answered, "We will all go." I said, "No, you can only go when I allow you to go."
114 Then they commenced again, talking about bad provisions, &c., &c. I told them, "You are well treated, you have had fresh meat as long as the vessel has been here." I said, "I see the mate and crew are here in combination against me, and I would show them what I was going to do with them." The mate then jumped out of the whole lot, and called me a vagabond. I called the crew to witness the language of the mate. Then he repeated, "Every one says you are a vagabond." I then went into the cabin, took my coat, and went ashore. When I left, the crew and mate were standing amidships, not at work. I tried to find a police justice. I met the ship-chandler, Mr. Schroeder, and we went on board the vessel, and when I came back, I saw the mate on the rail, dressed in shore clothes, and he told me the whole crew had gone, and had left the ship. I didn't notice him at all, and called the boy Schroebeke, and asked him when the crew left. He told me that they took their breakfast, dressed themselves, and left the vessel. The boy said that when they left the carpenter called the mate to come along with them, and the mate said, "Not yet, I am soon coming." As I was talking with my wife in the cabin, the mate called out from the deck, "That's a lie." I told him to keep his mouth shut till I asked him. He answered, "All right, I am going too." I answered him, "I cannot hold you," and off he went. The mate was in working clothes when I first left the ship, and when I came back, he was in shore clothes. I then went with Schroeder to Justice Garret, and told him that there had been a mutiny, and all the crew had left without my leave, and I wanted him to pick the crew up, that they were likely to go to New York, or to get away. Then he filled a paper out and handed it to a policeman, and an officer went with Schroeder and me on the Island, to find them. We met a policeman, who told me that they were already in the police court; I asked him how many, and found that they
115 were not all there. We then went to the ferry, and found the mate there. Then we took them to Judge Garret and I told him there had been a mutiny, and the men were deserting, and to keep the men; I would go to consul. Garrett said he had no jurisdiction. He kept the men, and I went to consul. Mr. Zach came in, and I told him the whole affair, and a protocol was taken of it. I had to sign it. Zach sent to the consul general's room, and returned, and handed me a paper, and told me to give it to the judge at Staten Island. I didn't read it; I brought it over, and handed it to Judge Garret, and they kept the crew. That is all I did about it. I am now a Prussian subject, and am not familiar with the laws of the United States. I went to consul and reported that the men were sent to Richmond jail. I went to the jail once, and called Kruse out, and spoke friendly to him. I did not ship a new mate. I took two men on board; they were shipwrecked men that I took as watchmen. I did not ship them; took them about twelve days after the crew were gone. On the 9th of August I went to the consul, and asked if he wouldn't allow me some men out of the prison, as I had no crew on board, and couldn't keep the vessel clean. I saw an official, who went into the consul's room, and he then gave me a paper to take down to Staten Island, and I took it to Judge Garrett. The next day but one three of the crew, Tarrect, Reickhoff, and Schroebeke, came on board the ship in the forenoon, and went into the forecastle. I called them out, and told them to go to work, and

they said, "No, we don't." They took more clothing, and off they went again. About 12 o'clock, after this, the policeman brought the carpenter, Kruse, Luett, and Speitz on board the ship. I called them into the cabin, and they asked me if they could go to the consul. I said "Yes, but hurry up, else it will be too late." The policeman had
116 them in custody when he brought them, and he said, "Here are the men, I have brought them," and off he went. They were not in his custody as policeman. About five o'clock Martens, Newman, and Luett came on board, and Martens said that the consul had told him to arrange with me. The mate said consul told him it was a private case between him and me. I said, "I'll ask the consul about it." He then asked, "When will you be at consul's?" I said at 11 the next day. Luett asked why he was put in prison; I answered him, "You had better ask the consul." Then they went forward, and got some clothing, and then left the ship. The next morning at 11 I was at the consul's from a quarter to 11 to 12½; none of the men came there during that time. As I came down stairs to go away, I found four of them standing outside. I asked Luett if he had seen the consul; he said, "No, not yet." Tarrect and Reickhoff were standing together. I told them to go on board; they laughed, and said, "No, not a bit of it." I saw them not again. Their clothes were removed in my absence on August 23d. On the day of the difficulty only Luett asked to go to consul; the carpenter did not ask. They all said, "We will all go." None of them had before this applied to go to consul. I first hired Martens; wrote to my owner to send me a carpenter over to Trieste; he was hired by the owner at Barth, and sent over to Trieste, and I shipped him there. I was never informed by the owner that he had permission to leave at any time; my letters don't speak of such a thing. I never heard, until after the commencement of this suit, that the carpenter claimed to have a paper permitting his discharge at any port. Went from Glochester to Pillau, which is the home port. Arrived there the middle of December, 1868, and paid the crew off, and laid the ship up for the winter; kept the carpenter on board as watchman; shipped him again on the 2d of April, 1869, and at that time paid him up
117 to that date. When before Judge Garrett I didn't hear any of the men say they wanted to go to consul.

Cross-examination:

The vessel laid up for January and February, 1869, at Pillau; in January, 1870, was at Newport, England; the ship went first from Pillau, where the crew were shipped, to Loderden; then to Newcastle, and then back to Pillau; then to Sweden; then to Glochester, England; then to Newport, England; then to Marseilles, and then to New York; we arrived back at Pillau from Newcastle in June, 1869; I never heard from anybody that a paper had been given to Martens, when he shipped; I never saw such a paper in the ship while the men were in jail; my father wrote to me, but I don't keep family letters; he never spoke about Martens. I never made a bargain with Martens, that he might leave at any port he wished; I didn't tell the mate after he had been in jail, that I'd settle with him; I put on his book the amount I gave him on the Saturday night, and I then told him I would meet him at consul's; I didn't say I would there settle with him; I never made up the amount due him; I entered the two last items of $5 each in his book; the footings in the book are not made by me; I didn't tell him that I would pay him off before the consul the next day. The two men came on board that very morning; one was named Viser, who said he had been a mate;

he is now on board. At first I told him I would keep him for a dollar a day; I didn't ship that man before the consul; on the day I met the two men at the outside of the consul's, I didn't speak to any others, except as I have stated, to Rieckhoff and Tarrect; the boy and Speitz were about there then; I never promised Martens to pay him off; when he came down and said consul had told him to arrange, I told him I had nothing to arrange; that was all I said.

118 HENRY SCHROEBEKE called and sworn for claimant.

Direct examination, through interpreter:

I am cabin boy on this bark, and am 16 years old; I was on board on August 1st, when the men left; before that, I had heard the crew say they could earn more money on American ships; heard nothing more; did not hear them speak about leaving the ship; I have seen the mate sell ship's rope on the 27th of June; the captain was not on board then; he sold the rope to a man; it was old rope, that could not be used otherwise.

CAPTAIN FISHER recalled.

At most I struck the boy with the rope three or four times; I did not strike him after the carpenter spoke in the cabin; I spoke of the beating at the consul's office.

(Objected to. Taken subject to objection.)

Claimants rest.

SCHMIDT called by libellant.

The boy showed me his arm afterwards; there were blue stripes on the arm; this was a few days afterwards; the boy was in the station-house then; I was on the quarter-deck after the crew came out of the cabin; I then heard the carpenter ask the captain to go to the consul's; the captain said "No, he had already allowed Luett, and one was enough to go to the consul;" I didn't hear the captain tell Martens he might
119 go to the consul; I heard the crew altogether ask if they couldn't go to the consul's, and the captain said no; this was after the beating of the boy; the men left their things on board when they left that morning.

MAX. NEWMAN called for libellant.

When the captain entered the two sums of $5 in my book, he said "I'll pay you off," and wouldn't have me on board under such circumstances; he didn't say when or where he would pay me off; it is not true that the captain sat at consul's till 12½ the next day; he was gone when I got there a few minutes past twelve, and I didn't see him; all the men were there then; the rope I sold for $1 75 was an old rope which was brought up by the anchor in Marseilles; it was not the ship's rope.

Cross-examination:

The consul told me that the captain was not there at 11½; that is why I know the captain was not there at 11½; when the captain asked the justice to arrest us, I stated all that happened, and I stated that the men had left to go to the consul's.

(Objected to.)

Copies of commitment in evidence, marked Exhibit "C," and of release, marked Ex. "D."

Libellants rest.

Capt. FISHER recalled.

I called Newman to put the $5 in the book, because I was afraid I wouldn't see him any more; on the Saturday night before the difficulty I gave the men money, and the mate $5; at the moment the mate
120 left, my wife told me she had given him $5 in Marseilles, and I recalled him and put these items in his book; I never heard of the $5 in Marseilles till then; the mate is a cousin of my wife; I had refused to give him money in Marseilles; I didn't hear any of the men say before the justice that the men wanted to go to the consul.

Cross-examination:

I told Garret that the men had left the vessel. I called the men deserters.

Copy of requisition and translations of parts of the books in evidence, and marked: Requisition, Ex. 1; translation of muster-roll, Ex. 2; translation of navigation, Ex. 3.

Testimony closed.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 29th day of August, in the year of our Lord one thousand eight hundred and seventy, I, Charles W. Newton, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March
121 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 68 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Julius Kreuse, to testify and the truth to say on the part and behalf of the libellants, in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States for the eastern district of New York, wherein Max. Newman is libellant, and The Ship Elwine Kreplin, her tackle, &c., respondent, and claimant.

And the said JULIUS KREUSE, being about the age of 22 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Julius Kreuse, and he did thereupon depose, testify, and say as follows, viz:

I am a seafaring man; have followed the sea six years. I expect to go upon a voyage to sea as soon as I can get a job. I served on board the ship Elwine Kreplin as seaman; I shipped at Barth, in Prussia, at $12 (Prussian dollars) per month; I left the vessel in New York on the 1st of August; I have received about $100 on account of my wages.

Q. After you shipped, to what ports did you go?

(Objected to. Question withdrawn.)

A. After my arrival at New York I was arrested.

Q. How long were you in New York before you were arrested?
Objected to as immaterial.)
A. About half to three-quarters of an hour?
Q. By whom?
122 (Objected to.)
A. I don't know—I don't understand the question; I was arrested by a policeman; I was taken to a police-station.
(Objected to.)
Q. How long were you in prison?
A. From 10 till 5 o'clock.
Q. Did you ask permission to leave that vessel?
A. I ask' permission of the captain.
Q. Why did you ask permission?
(Objected to.)
A. I wanted to speak to the German consul.
Q. Why did you desire to speak to the consul?
(Objected to.)
A. For all them troubles that were there.
Q. What was your general conduct on board toward your captain?
(Objected to.)
A. I don't understand the question.
Question repeated through an interpreter.
A. Always good.
Q. Did you assign your wages, due on the Kreplin, to Mr. Newman?
(Objected to.)
A. Yes, sir.
Q. When?
123 (Objected to.)
A. I don't recollect the day.
(Paper shown witness, and he is asked:
Q. Is that the paper by which you assigned your claim to Mr. Newman?
A. Yes, sir.
Suit paper is here marked "Exhibit A, for identification. Cha's W. Newton, U. S. com'r, August 29th, 1870."
I was imprisoned from 10 o'clock on the 1st of August until 12 o'clock of the 12th of August.

Cross-examined by Thomas Burke, esq., for defendants:

I was born in Prussia; at Frauendorf; I belong to Prussia; I have never been in the United States before.
Q. When did you first come to this country?
(Objected to.)
A. In July last. I signed shipping articles at Barth; the shipping articles now shown me are the articles I signed.
The said articles are here offered in evidence by the respondents, and are marked "Exhibit B. Cha's W. Newton, U. S. com'r, August 29th, 1870."
Q. Did Mr. Newman pay you anything when you assigned your claim to him?
(Objected to.)
A. No. If Newman gets my wages from the ship, I am to get them from Newman. I cannot read English.

124 Redirect:

The assignment to Newman was read to me before I signed.

Recross-examination:

I have seen the Prussian consul.

Redirect resumed:

I saw him first after I came out of prison.

JULIUS KRAUSE.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 29th day of August, in the year of our Lord one thousand eight hundred and seventy, I Charles W. Newton, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No.
125 68 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Carl Herman Frederick Luett, to testify and the truth to say on the part and behalf of the libellants, in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States for the eastern district of New York, wherein Max. Newman is libellant, and The Ship Elwine Kreplin, her tackle, &c.

And the said CARL HERMAN FREDERICK LUETT, being about the age of 20 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Carl Herman Frederick Luett, and he did thereupon depose, testify, and say as follows:

I am a sea-faring man; have followed the sea six years; I served on board the ship Elwine Kreplin, as seaman; I shipped at Barth, to be sent to Pillau, to join the ship there; I left the vessel at New York; I received $75 on account of my wages.

Q. When you arrived at New York, why did you leave the vessel?

(Objected to.)

A. I asked the captain to leave to see the consul; I did not see the consul then; they put me in jail; I wasn't a half an hour on shore before I was put in jail; I was in jail from the 1st of August to the 12th of August; I saw the consul after I came out of prison; after I saw the consul I went to the captain on board the ship; the consul told me to go on board the ship and see the captain, and ask the captain what the reason was, why he put me in jail. The captain told me then to go to the consul at 11 o'clock the next day, and he would meet me there. I went to the consul the next day, at 11 o'clock; the captain came
126 up there while I was standing at the door. The captain never asked me any questions.

Q. When you were brought up before the police justice, was the captain present?

A. Yes, he was.

Q. What was your conduct, on board the vessel, towards the captain?

A. Always pretty good; I did all I was told; I signed the paper or assignment of my wages to Max. Newman; I expect to go to sea shortly.

Cross-examination by Mr. Burke:

I was born in Bame, Prussia; I am a Prussian subject; I signed shipping articles when I went aboard the Elwine Kreplin. Exhibit B is like the shipping articles I signed; Exhibit B is a copy of the shipping articles I signed; I cannot read English.

Q. Did you receive anything from Newman for assigning your wages?

(Objected to.)

A. No, sir.

Q. If Newman collects your wages, are you to receive them from Newman?

A. When Newman gets the money I will get it too. When I saw the consul he told me to go on board the vessel; I then went aboard the vessel; I left the vessel again. The captain said to me, to be at the consul's office at 11 o'clock the next day. I saw the consul the next day.

Q. What did the consul tell you then?

(Objected to.)

A. The consul told me to go on board, see the captain, and try
127 and settle the matter; that he would pay them off, providing they would pay the expenses; the consul did not tell me to go on board then. I did not go aboard again after I left the consul's; I have been on board since; that was about eight days after I left the consul's office; I took my clothes off then; I did not see the captain then. He was not on board.

Q. Did not the consul, at anytime, and if so, when, tell you to go on board the vessel and resume work.

(Objected to.)

A. The consul did not tell me direct to go on board.

Redirect:

The consul told me to go on board and ask the captain the reason why he put me in jail; after the consul told me to go aboard the second time I met the captain on the street.

CARL LUETT.

SEPTEMBER 1ST, 1870.

Present, respective counsel. Mr. McMahon, proctor for libellant, recalls Carl Luett.

Claimant's counsel objects to the recalling of the witness Carl Luett.

Q. When did you ship on board this vessel?

A. 16th of March, 1869.

Q. For what time did you ship?

(Objected to on ground that shipping articles are best evidence.)

A. For two years; I left the vessel on the first of August, 1870.

128 Q. Did you, or did you not, see the consul before you were put in jail?

(Objected to.)

A. No, I see him not before. The consul told me to go on board to

see the captain, and ask him what the reason was why he put me in jail, as the captain gave me permission to see the consul. On the next day, at 11 o'clock, when I saw the consul then, he told me I had right the first time I left it; I did wrong in leaving the ship the second time without permission of the captain, and the consul said to me to go on board the vessel, and if the captain said anything to me, which I afterward wanted to see the consul about, that I could leave the vessel and come to see him. The consul also told me that the captain had been to see him, and had said that he would pay the crew, less expenses. The consul then told me to go back on board and make it good with the captain; that there was war in Prussia, and he had all he could do, and had not time to attend to take every word of it the same as the court could do.

Cross-examined by Thomas Burke, esq., for claimant:

Q. Were you ever discharged from the vessel?

(Objected to.)

A. No.

Redirect:

Q. Do you know what a discharge is?

(Objected to. Withdrawn.)

Q. What do you understand is the meaning of the word "discharge?"

129 (Objected to.)

A. I was not discharged from this ship.

Q. What do you mean by the use of the word "discharge," saying you were not discharged from this vessel?

A. I mean when I got my money and mine book and my certificate from the captain. I went to see the consul because I wanted to go home. I wanted to go in the navy. That is the reason I wanted to go home.

Q. Were you obliged to serve in the navy at that time?

(Objected to.)

A. No; but I was willing to serve, though.

CARL LUETT.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 30th day of August, in the year of our Lord one thousand eight hundred and seventy, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil

130 causes depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24, 1780, did call and cause to be and personally appear before me at my office, at No. 68 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Charles Tarrect, to testify and the truth to say on the part and behalf of the libellants, in a certain suit or matter

of controversy, now depending and undetermined in the district court of the United States for the eastern district of New York, wherein Max. Newman is libellant and The Ship Elwine Kreplin is respondent or claimant.

And the said CHARLES TARRECT, being about the age of 21 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Charles Tarrect, and he did thereupon depose, testify, and say as follows, viz:

I am a sea-faring man. Have followed the sea for six years. I expect to leave this port on a voyage to sea to-morrow. I know the ship Elwine Kreplin. I served on board of her as able seaman. I shipped at Pillau, Prussia, on the 24th of June, 1869.

Q. At what compensation?

(Objected to.)

A. At twelve Prussian dollars per month.

Q. For what length of time did you ship?

(Objected to.)

A. For two years. I left the vessel on the 1st of August, 1870, at Staten Island. I have received 75 Prussian dollars, on account
131 of my wages. There is due me about $100. I left the vessel to see the Prussian consul. I did not see him.

Q. Why did you want to see the consul?

(Objected to.)

A. To go to the Prussian war. I did not tell that to the captain before I went to see the consul.

Cross-examined:

I was born at Pillau, Prussia. I am a Prussian subject. I signed shipping articles for the voyage on board the Elwine Kreplin. Exhibit B is a certified copy of the articles I signed. I was not discharged from said vessel. If Newman collects my wages, I am not to receive them from him, but from the boarding-house keeper.

Redirect:

I did not enter into such arrangement with Newman.

Re-cross:

I never intended to give my wages away to Newman.

CARL TARRECT.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 30th day of August, in the year of our Lord one thousand eight hundred and seventy, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United
132 States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and

see the captain, and ask him what the reason was why he put me in jail, as the captain gave me permission to see the consul. On the next day, at 11 o'clock, when I saw the consul then, he told me I had right the first time I left it; I did wrong in leaving the ship the second time without permission of the captain, and the consul said to me to go on board the vessel, and if the captain said anything to me, which I afterward wanted to see the consul about, that I could leave the vessel and come to see him. The consul also told me that the captain had been to see him, and had said that he would pay the crew, less expenses. The consul then told me to go back on board and make it good with the captain; that there was war in Prussia, and he had all he could do, and had not time to attend to take every word of it the same as the court could do.

Cross-examined by Thomas Burke, esq., for claimant:

Q. Were you ever discharged from the vessel?
(Objected to.)
A. No.

Redirect:

Q. Do you know what a discharge is?
(Objected to. Withdrawn.)
Q. What do you understand is the meaning of the word "discharge?"
129 (Objected to.)
A. I was not discharged from this ship.
Q. What do you mean by the use of the word "discharge," saying you were not discharged from this vessel?
A. I mean when I got my money and mine book and my certificate from the captain. I went to see the consul because I wanted to go home. I wanted to go in the navy. That is the reason I wanted to go home.
Q. Were you obliged to serve in the navy at that time?
(Objected to.)
A. No; but I was willing to serve, though.

CARL LUETT.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 30th day of August, in the year of our Lord one thousand eight hundred and seventy, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil
130 causes depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24, 1780, did call and cause to be and personally appear before me at my office, at No. 68 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Charles Tarrect, to testify and the truth to say on the part and behalf of the libellants, in a certain suit or matter

of controversy, now depending and undetermined in the district court of the United States for the eastern district of New York, wherein Max. Newman is libellant and The Ship Elwine Kreplin is respondent or claimant.

And the said CHARLES TARRECT, being about the age of 21 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Charles Tarrect, and he did thereupon depose, testify, and say as follows, viz:

I am a sea-faring man. Have followed the sea for six years. I expect to leave this port on a voyage to sea to-morrow. I know the ship Elwine Kreplin. I served on board of her as able seaman. I shipped at Pillau, Prussia, on the 24th of June, 1869.

Q. At what compensation?

(Objected to.)

A. At twelve Prussian dollars per month.

Q. For what length of time did you ship?

(Objected to.)

A. For two years. I left the vessel on the 1st of August, 1870, at Staten Island. I have received 75 Prussian dollars, on account
131 of my wages. There is due me about $100. I left the vessel to see the Prussian consul. I did not see him.

Q. Why did you want to see the consul?

(Objected to.)

A. To go to the Prussian war. I did not tell that to the captain before I went to see the consul.

Cross-examined:

I was born at Pillau, Prussia. I am a Prussian subject. I signed shipping articles for the voyage on board the Elwine Kreplin. Exhibit B is a certified copy of the articles I signed. I was not discharged from said vessel. If Newman collects my wages, I am not to receive them from him, but from the boarding-house keeper.

Redirect:

I did not enter into such arrangement with Newman.

Re-cross:

I never intended to give my wages away to Newman.

CARL TARRECT.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 30th day of August, in the year of our Lord one thousand eight hundred and seventy, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United
132 States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and

personally appear before me, at my office, at No. 68 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, William Speitz, to testify and the truth to say on the part and behalf of the libellants, in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States for the eastern district of New York, wherein Max. Newman is libellant, and The Ship Elwine Kreplin is respondent or claimant.

And the said WILLIAM SPEITZ, being about the age of 26 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William Speitz, and he did thereupon depose, testify, and say as follows, viz:

I am a sea-faring man; have followed the sea ten years. I expect to leave on a voyage to sea shortly. I have not shipped yet, but will as soon as I can. I know the ship Elwine Kreplin. I served on board said vessel as seaman.

Q. On what voyage?

(Objected to.)

A. From Pillau to Sweden; from thence to England; from
133 thence to France; from thence to New York. I shipped at Pillau, Prussia, on the 22d of June, 1869, at $13 per month. I left the vessel at Staten Island on the 1st of August, 1870. I was not discharged from the vessel.

Q. Why did you leave the vessel?

(Objected to.)

A. I wanted to see the consul.

Q. Why did you want to see the consul?

(Objected to.)

A. I wanted to see the consul to go home to the war, and the captain said no; that there was no war at that time. Then I said to the captain that he had given permission to two men to go and see the Prussian consul, and that I thought I ought to go too. I have received on account of my wages about $120, (Prussian dollars.) There *is* about $50 (Prussian dollars) coming to me.

Cross-examined by Thomas Burke, esq., for claimant:

I was born in Pillau, Prussia. I am a Prussian subject. I signed shipping articles for this voyage in Prussia. Exhibit B is a copy of the shipping articles I signed.

Q. If Max. Newman, the libellant, collects your money from the vessel, are you to receive it from him?

(Objected to.)

A. When the money is collected I will not get the money from Newman, as Newman might not be in port. Then I expect to get my money from the boarding-master, H. Tumnsna.

Re-direct:

134 Q. Did or did you not enter into any such arrangement as you spoke of with Mr. Newman?

A. No; I did not enter into any such arrangement.

W. SPEITZ.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 30th day of August, in the year of our

Lord one thousand eight hundred and seventy, I, Charles W. Newton, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States;" passed February 20th, 1813, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 68 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Charles Reickhoff, to testify and the truth to say on the part and behalf of the libellant, in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States for the eastern district of New York, wherein Max. Newman is libellant, and The Elwine Kreplin is respondent or claimant.

And the said CHARLES REICKHOFF, being about the age of 20½
135 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Charles Reickhoff, and he did thereupon depose, testify, and say as follows, viz:

I am a seaman; have been for 5½ years; I expect to leave on a voyage to sea to-morrow in a bark, I don't know her name; I am acquainted with the ship Elwine Kreplin; I served on board of her; as seaman on board the vessel on her last voyage. I shipped on board at Barth, in Prussia; I went on board the vessel at the same time that Julius Kreuse did; we shipped on board the vessel on the 16th of March, 1869, at $12 (Prussian,) per month.

(Objected to on the ground that the shipping articles shows it.)

I left the vessel on the 1st of August, 1870, at Staten Island, New York; I have received about 75 or 80 dollars from the vessel; I will have to get from that ship about $120, as due me; I was not discharged from the vessel; I left the vessel because I wanted to go to the consul; I wanted to go over to Prussia to serve in the army; it was time for me to serve; I told the captain so.

Cross-examined by Thomas Burke, esq., for defendants:

Exhibit B, is not the same articles I signed, but are a copy of them; I was born in Barth, in Prussia; I am a Prussian subject; I am living now in New York at Mr. Henry Thompson's, boarding, 37 Oak street.

CARL REICKHOFF.

136 CARL REICKHOFF recalled for cross-examination.

I did not intend to give my wages to Newman, but meant for him to collect them for me, and pay them to me, and if Newman should not be here then, the boarding-master was to pay it over.

Redirect:

The assignment, Exhibit A, was read over to me before I signed it.

Recross-examination:

The mate, Mr. Newman, read it over to me; I can't either read, write, or speak English.

CARL REICKHOFF.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this 5th day of September, in the year of our Lord one thousand eight hundred and seventy, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil
137 causes depending in the courts of the United States,'" passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at No. 68 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, John Frederick Heinrich Schroebeke, to testify and the truth to say on the part and behalf of the libellants, in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States for the eastern district of New York, wherein Max. Newman is libellant, and The Ship Elwine Kreplin is respondent or claimant.

And the said JOHN FREDERICK HEINRICH SCHROEBEKE, being about the age of seventeen years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John Frederick Heinrich Schroebeke, and he did thereupon depose, testify, and say as follows, viz:

I follow the sea for a living; I have followed the sea for four years; I expect to go to sea as soon as I can get a chance; I know the bark Elwine Kreplin; I served as boy on her last voyage to this port. I shipped on her at Barth, Prussia; I joined her at Pillau; I shipped on the 16th of March, 1869, at the same time that the other men shipped.

Q. At what compensation per month?

(Objected to; as the shipping articles show.)

A. Nine thalers per month.

Q. For how long a time did you ship?

A. For two years; I left the vessel at Staten Island August 1st, 1870.

138 Q. Why did you leave the vessel?

(Objected to.)

A. The captain punished me.

Q. How did he punish you?

(Objected to.)

A. He whipped me.

Q. With what?

A. With a rope's end.

Q. Where did you go after leaving the vessel?

(Objected to, as immaterial.)

A. I was gone to see the consul; I did not see the consul; I did not see him, because I was imprisoned before I could see him.

Q. By whom were you arrested, if you know?

A. By the police of Staten Island. After I was arrested I went to

the police-station; I was kept imprisoned eleven days; I went to prison August 1st, 1870; I left August 11th, 1870. The captain did not give me permission to go ashore. After I came out of prison I went with some policemen to the consul. I saw the consul; the consul said they were free—that they could go. The consul said to arrange myself with the captain the best way I could, and that he (the captain) would most likely bring them out, and the consul said to the policeman to let me go.

Q. Was there anything else said?

A. No; I heard Newman say in the consul's office that the captain had said in prison that he had left the matter with the consul, and that he had got nothing to do with the crew. There was nothing more said by any of the parties on that day. I saw the consul a second
139 time in the forenoon of the next day. The consul then said to me to see the captain and arrange the best way I could; that the captain would pay them off after deducting expenses. There was nothing else said except that we said we had no money to go over, and the consul said he couldn't help that. I don't recollect anything else that was said. I saw the consul again the next day; I was then with all the rest of the crew. The crew told the consul that the captain would come to the consul, but the captain was not there. The consul said to us that he had no time to talk to us about it, and that we must leave. I have received on account of my wages 100 thalers.

Q. Did you understand the last question?

(Objected to.)

A. I did not understand the question. I received 52 thalers on account of my wages; that is all I have received.

Cross-examined by Mr. Burke:

I was born in Bodtshed, in Prussia; I am a Prussian subject; when I shipped aboard the Elwine Kreplin I signed shipping articles; "Exhibit B" is a copy of the shipping articles I signed; the mate and crew of the vessel did not tell me to leave the vessel; I did not leave the vessel because the rest of the crew left; I left at the same time the rest of the crew did; we all left together; I left the vessel because the captain punished me; I did not leave the vessel, because I wanted to return to Europe; I wanted to see the consul, and return on board the ship. The captain did not tell me to go back on board the vessel. The second time he told us all to go back on board the vessel, but I had no money to go. I did go back afterward to get my clothes; after I got
140 my clothes I left right away. The captain was not on board then, when I got my clothes; was about eight days after the consul told me to go on board; I did not want to stay on board at that time.

Q. Were you ever discharged from that vessel?

(Objected to.)

A. The consul told me that the captain would pay me off.

Question repeated.

(Objected to.)

A. Yes.

Q. By whom and when?

A. The consul said that the captain said he would pay us off after deducting expenses.

Q. Is that the only discharge you ever got from the vessel?

A. Yes. I never asked the captain to pay me off. I kept an account of the money received by me on account of my wages. I produce the account. The captain wrote it. I gave my claim away to Max. Newman,

the libellant. If Newman collects the money, I will get my part from him.

ALBERT P. SHROEBEKE.

UNITED STATES OF AMERICA,
Southern District of New York:

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil
141 causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reasons for taking the foregoing depositions *is*, and the fact is, that the witnesses' testimony is material and necessary for libellants in the cause of action mentioned in the caption hereof, and that the witnesses live at a greater distance from the place of trial of said cause than one hundred miles, and that the witnesses are about to proceed on a voyage to sea and without the jurisdiction of this court. I further certify that a notification of the time and place of taking the said depositions, signed by me, was made out and served on the proctor for the respondent or claimant to be present at the taking of the depositions, and to put interrogatories if he or they might think fit.

I further certify that, on the 29th & 30th of August and fifth day of September, A. D. 1870, I was attended by counsel for respective parties, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were, by consent of counsel, taken by my duly sworn clerk, and were reduced to writing in the presence of the witnesses, and from statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of transmitting the same with my own hand to the court for which the same were taken.

I further certify that I am not of counsel or attorney for either
142 of the parties in said depositions and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this fifth day of September, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

[L. S.]

CHA'S W. NEWTON,
U. S. Commissioner Circuit Court of the U. S. for the Southern District of New York.

Consul's requisition.

CONSULATE GENERAL OF THE NORTH GERMAN UNION:

The undersigned consul-general for the United States of America, of the North German Union, composed among other sovereignities of the Kingdom of Prussia, the Grand Duchies of Mecklenburg-Schwerin, and

Oldenburg, and the Free Hanseatic Cities of Lubeck, Bremen, and Hamburg, which are foreign governments having treaties with the United States, stipulating for the restoration of seamen deserting; and that the consuls, vice-consuls, and commercial agents of the said governments, are authorized to require the assistance of the local authorities for the search, arrest, and imprisonment, of deserters from the ships of war and merchant vessels of their respective countries, respec'fully represents: That Newman, Martens, Carpenter, Speitz, Kreuse, Luett, Rieckhoff, Tarrect, Schroebeke, seamen belonging to the crew of the North German bark Elwine Kreplin, and not being citizens of the United States of America, have deserted therefrom, on or about the 1st of August, while the vessel was lying in the port of New York, in said United States, and that such fact is duly proved to your petitioner.

That the undersigned respectfully requests the assistance of
143 your honor, and applies for a warrant from your honor to the marshal of said district, to cause the said Martens, Speitz, Kreuse, Luett, Rieckhoff, Tarrect, Schroebeke, to be arrested upon said charge of desertion, and if said charge be true, that they be detained at the cost and expense of the undersigned until there be an opportunity to send them back to the dominions of the said Union, according to law.

New York, Aug'st 1st, 1870.

[L. S.] (Signed) JOHANERS ROESING,
Consul General.

Muster-roll.

Muster-roll of the crew of the Prussian vessel Elwine Kreplin, H. Fisher, of Barth, master. Done at Barth, March 8th, 1869.

Before the undersigned mustering authorities, the following agreement of hire has been made and declared between H. Fisher, of Barth, master of the Prussian vessel Elwine Kreplin, of the first part, and the follow'-named seamen, viz:

1. The boatswain, Karl Hern, Christ. Kraeft, of Pesion.
2. The seamen Christ. Heine, Jul. Kreuse, of Frauendorf.
3. The seamen Karl Hern, Fried't Luett, of Barth.
4. The seamen Karl Ludio, Freid't Reickhoff, of Barth.
5. The boy Joh. Fried't Schroebeke, of Fuhlendorf.
6. The seaman John Wilh. Ed. Zuhleke, of Barth.
7. The cabin watch Jouch Christ. Heiner Schmitt, of Barth, of the second part.

1st. The above-named seamen hire themselves for the service of the above-mentioned vessel, in accordance with the legal regulations
144 printed in the books of navigation, for the voyage from Pillau to, not determined, in general, for the time until the vessel is brought into a Prussian port for winter quarters.

2d. The wages which are to be paid by the master, H. Fisher, from the day of the departure from home, have been fixed as follows:

For the mate, at 24 thalers per month.
For the boatswain, at 16 thalers per month.
For the carpenter, at 21 thalers per month.
For the cook, at 14 thalers per month.
For each seaman, at 12 thalers per month.
For the boy, at 9 thalers per month.
For the , at 6 thalers per month.

For the cabin watch, at 3 thalers per month.

The amount for one month has been advanced to each of the seamen.

3d. In addition to the wages, the master, H. Fisher, binds himself to give to the seamen the prescribed lodging and board as hereinafter specified.

4th. Each seaman receives daily, if time and circumstances permit it, the following victuals:

Sunday, Tuesday, and Thursday, for dinner and supper, peas or beans and 1 lb. of beef, or ¾ lb. of pork, or ½ lb. of bacon.

Monday, Wednesday, Friday, and Saturday, for dinner and supper, barley, grain, or rice, and ½ lb. of pork, or ¾ lb. of beef, or ¼ lb. of butter; for breakfast, every day, coffee, that is to say 2 ounces of coffee and 3½ ounces of succory per week.

In addition to this every seaman receives 7 lb'. of hard bread, ½ lb. of butter, ¾ ounces of tea per week; at places where no butter is to be had, each of the men receives instead of 1 lb. of butter ⅜ quarts of sweet oil, with $\frac{3}{10}$ quart of vinegar; and if succory is wanting, the crew receive instead of ½ ounce of succory ¼ ounce of coffee. At every place where a cargo is taken in or discharged, or where the mas-
145 ter is obliged to remain for a longer period of time, he is bound to give to the crew once or twice per week instead of corned beef and peas or beans, fresh meat with vegetables or potatoes, when it can be had, and the meat is to be given in the same quantity. The seamen are only then to receive brandy when the master finds it necessary to make a distribution of it—in case of stormy or cold weather, or hard work.

5th. The costs for the preparation of, and the stamp on this agreement, respectively, muster-roll, are assumed by the master.

The mate, Karl Hassett, is already on board, and is to be mustered hereinafter. Read, approved, and signed.

(Signed) H. FISHER.
H. KRAEFT.
JUL. KREUSE.
C. LUETT.
C. RIECKHOFF.
J. SCHROEBEKE.
E. ZUHLEKE.
H. SCHMITT.

Royal Mustering Authorities.

(Signed) STIMARTH, PLOETZ.

The foregoing agreement of hire, entered into and declared before us, is herewith authentically prepared as muster-roll under our seal and under our signature.

Barth, 8th March, 1869.

Royal Mustering Authorities.

[L. S.] STIMARTH, PLOETZ.

Upon the basis of the foregoing muster-roll, and in pursuance of the agreement of hire entered into with them this day, the hereinafter-named seamen, to wit:

146 The mate, Karl Hassett, of Barth; the cook, Gottlieb Dehl, of Rosenberg; the carpenter, Abraham Martens of Bartelhagen;

the seaman, Wilhelm Kuhl, of Ohia, near Dantzig; have been mustered before the undersigned mustering authorities.

PILLAU, 2*d April*, 1869.

Mustering Authorities for the port of Pillau.
By order of
[L. S.] CLAASSEU.

Shown and registered in the consulate of the North German Union, Rotterdam, 29th April, 1869.
The Consul of the Union.
[L. S.] V. W. BUNEYS.

According to the agreement with Captain Fisher of this day, Sarren Abrahamsen, of Denmark, 31 years of age, has been mustered subsequently as steward, at £3 monthly wages, advance £5, for the voyage from here to Marseilles, and further, in accordance with the agreement of hire of this muster-roll, dated Barth, 8th March, 1860, made with the remaining crew.

SARREN ABRAHAMSEN.

NEWPORT, MONMOUTHSHIRE, 20*th January*, 1870.
H. FISHER.

The Vice-Consul of the North German Union.
[L. S.] R. W.

Seen at the vice-consulate of the North German Union for the voyage to Marseilles at Newport, Monmouthshire, 20th January, 1870.
The Vice-Consul.
[L. S.] R. W.

147 The boatswain, H. Kraeft, has been discharged from the service on account of sickness, both parties consenting.
Newport, 21st January, 1870.
The Vice-Consul of the North German Union.
[L. S.] R. W.
H. FISHER.
H. KRAEFT.

According to notice from Captain Fisher, the seamen S. Kirschneck has deserted the service at this port.

The seamen Peter Frehan, aged 29 years, of Jersey, has been mustered according to agreement, at £2 5 monthly wages, £3 5*s.* advanced, in accordance with this muster-roll, dated Barth, 8th March, 1869, for the voyage to Marseilles, and further.

PETER FREHAN.

NEWPORT, MONMOUTHSHIRE, 22*nd January*, 1870.

The Vice-Consul of the North German Union.
[L. S.] R. W.

The captain gave notice this day that the seaman, Peter Frehan, of Jersey, had deserted the vessel on the 1st of March, and August Fett, of Uckeominde, has been mustered in his stead, as seaman, at the wages of 14 thalers (Prussian currency) per month, under the above conditions.
Marseilles, 3d March, 1870

AUGUST FETT.

The consul of the North German Union.
By order,
[L. S.] R. KOLCHER.

The captain gave notice the day that the cook, Sarren Abrahamsen, had absconded from the vessel in the night of the 16th-17th inst.
Marseille', 18 March, 1870.
The consul.
By order,
R. KOLCHER.

148 The captain gives notice, that he has appointed the Cæsar Tarrect a full seaman, and that he is to receive from the 22d of April, 13 thalers (Prussian currency) per month. T. G. Michaelis, of has been registered as a passenger, for the voyage to New York.
Good for the voyage to New York.
Marseille', 21 April, 1870.
The Consul of the North German Union.
By order:
[L. S.] R. KOLCHER.

Subsequent agreement of mustering to the muster-roll, dated Barth, 8th March, 1869.

[Stamp.]

[L. S.] Done at Pillau, 2d April, 1869.

Before the undersigned, mustering authorities, the following agreement of hire has been made and declared between the master, H. Fisher, of Barth, master of the Prussian vessel Elwine Kreplin, of the first part, and the following-named seamen, viz:
The mate, Carl Hassett, of Barth.
The cook, Gottlieb Dehl, of Rosenberg.
The carpenter, Abraham Martens, of Bartelhagen.
The seaman, Wilhelm Kuhl, of Ohia, near Dantzic, of second part.
1. The above-named seamen hire themselves for service on the above-named vessel, in accordance with the legal regulations printed in the books of navigation for the voyage from here to Dortreaht, and further.
2. The wages which are to be paid by the master, H. Fisher, from the time of coming on board, are fixed as follows:
For the mate, at 24 thalers per month.
For the cook, at 14 thalers per month.
For the carpenter, at 21 thalers per month.
For the seamen at 12 thalers per month.
149 One month's wages have been paid in advance to the mate, and two months' wages have been paid in advance to the cook and the seamen.
3. In addition to the wages the master, H. Fisher, binds himself to give to the seamen the prescribed lodging and board hereinafter specified.
4. Each seaman receives daily the following victuals, (see the muster-roll, dated Barth, 8th March, of this year.) The costs for the preparations of and the stamps on this agreement are assumed by the master.

The above-named seamen are mustered subsequent to and in accordance with the agreement of hire, dated Barth, 8th March, 1869.

Read, approved, and signed,

H. FISHER.
C. HASSETT.
A. MARTENS.
G. DEHL.
KUHL.

Royal Mustering Authorities for the port of Pillau.
By order.
[L. S.] CLAASSEU.

The foregoing agre'ment of hire this day made and declared before us, is herewith authentically prepared as muster-roll under our seal and under our signature.

Pillau, 2d April, 1869,
Royal Mustering Authorities. [L. S.]
By order.

CLAASSEU.

Shown and registered at the royal Prussian vice-consulate at Newcastle-on-the-Tyne, 18th March, 1869.

The Royal Prussian Vice-Consul,
[L. S.] G. SCHMOLL.

150 The mate, Carl Hassett, of Barth, has this day been discharged, before the undersigned mustering authorities.

Pillau, 9th June, 1869.
The Royal Mustering Authorities,
By order.
[L. S.] NEWRREAUM.

[Stamp.]

Before the undersigned mustering authorities the seaman hereinafter named, to wit:

1. The mate, Theodor Newman, of Stralsund, who receives 26 thalers monthly wages.
2. The cook, A. Kirschnica, of Rosenberg, who receives 15 thalers monthly wages.
3. The seaman, Friedr. W. Spietz, of Alt. Pillau, who receives 13 thalers monthly wages.
4. The light seaman, C. Tarrect, who receives 12 thalers monthly wages, have been mustered on the basis of agreement of hire. Dated Pillau, 2 April, 1869.

Pillau, 22d, June, 1869.
The Mustering Authorities for the Port of Pillau.
[L. S.] J. MAJE.

Seen at the consulate of the North German Union, at Gefle, for the voyage to Gloucester.

Gefle, 2d of August, 1869.

F. O STURSBURG.

Registered for the voyage to Newport.
Gloucester, 30 December, 1869.

The Vice-Consul of the North German Union.
[L. S.] A. F. BLAUET.

(Indorsed :) Translation of the muster-roll. Ex. 2, (C. S. D.)

151 *Extracts from book of navigation.*

Page 1.] BOOK OF NAVIGATION.

For the ship's boy, Joh. Frede. Henerich Schroebeke, issued.
Stethin, 17th April, 1866.
Royal Prussian Mustering Authorities.
[L. S.] LACSOVITZ.

Page 3.] DESCRIPTION OF THE HOLDER.

1. Given and surname, John Fred. Heins. Schroebeke.
2. Place of birth, } Fuhlendorff; Kiens Franzdorf.
3. Residence, }
4. Day and year of birth, 19th May, 1850.
5. Height, below 5 feet.
6. Hair, dark brown.
7. Eyes, grey.
8. Particular marks, none.

Signature of the holder,
JOH. SCHROEBEKE.

Page 10.] Mustered in on the ship Elwine Kreplin, master H. Fisher, as boy for the voyage, indefinite, for a hire of 9 thalers per month.
Barth, 8th March, 1869.
Royal Prussian Mustering Authorities.
[L. S.] STIMARTH.

Page 29.] Appendix. Book of German mercantile law. Fifth book of maritime trade.

Page 29.] Fourth title. Of the crew.

152 Page 30.]

ARTICLE 530.—If a seaman is hired subsequent to the preparing of the muster-roll, he is to be bound by the agreement entered into with the remaining crew, according to the contents of the muster-roll; in case there is no other agreement, and in particular, can only claim the same wages to which the other seamen of his rank are entitled, pursuant to the muster-roll.

ARTICLE 532.—The master may by force compel a seaman to do his duties, who avoids entering upon or continuing in the service after the mustering.

ARTICLE 533.—The seaman is bound to obey all directions of the master without resistance, as regards the ship's service, and to do all work with which he is charged for the ship and cargo.

He is subject to the disciplinary power of the master. Further particulars concerning the disciplinary power of the master are reserved to the laws of the country.

ARTICLE 536.—If no other agreement has been made, the wages are to be paid *after* to the seaman after the completion of the voyage or on his discharge, if that should occur sooner.

Whether and to what extent advances and payments on account are to be made before the commencement of the voyage, and during the voyage, is prescribed by the laws of the country, and, if they are wanting, by the custom of the home port.

ARTICLE 537.—The seaman is not allowed to sue the master in a foreign court. If he acts against this direction he is not only liable for the damages sustained thereby, but he also loses the wages which he has earned until then.

153 In cases which allow of no delay he may demand the preliminary decision of the consul of this country, or of the consul who is charged with the duties of the former, or, if there is none such, of the consul of another German State.

Each party must, in the meantime, abide by the decision of the consul, reserving his privilege to pursue his rights before the proper authorities after the completion of the voyage.

Page 31.]

ARTICLE 538.—The seamen is bound to remain in the service during the whole voyage, including any intervening voyages, until the voyage back is completed, in case nothing else is stipulated in the agreement of hire. If the voyage back does not end in the home port he has the right to claim being forwarded to the port where he was mustered without cost, (article 517,) and that his wages be continued during the voyage, or, if he so choose, that he receive an equivalent compensation.

ARTICLE 539.—If after the completion of the starting voyage an intervening voyage is concluded upon, or if an intervening voyage is completed, the seaman may demand his discharge in case two or three years have elapsed since he entered the service, as the vessel may be either on a European or non-European port. On the discharge the wages earned until then are to be paid to the seaman; but no extra compensation. The discharge cannot be demanded if the return voyage has been ordered.

ARTICLE 540.—The foregoing article is not to apply if the seaman has hired himself for a longer period.

The hireing for an indefinite period, or with the general clause that after the completion of the starting voyage the service is to be continued for all voyages yet to be concluded upon, is not regarded as hiring for a longer period.

154 ARTICLE 541.—In all cases when a vessel remains out for more than two years, an increase of pay is to take place for the seaman who has been in the service since the starting voyage if there is no other agreement.

The rate of increase is fixed by the laws of the country.

ARTICLE 542.—The agreement of hire ends if the vessel is lost to the owner by an accident, and particularly so if it is lost at sea; if it is adjudged that it cannot be repaired, or that it is not fit to be repaired, (article 444,) and in the latter case if it is at once sold at public sale; if it is robbed; if it is detained; and seized and declared to be lawful prize.

In that case, the seaman is not only entitled to the wages which he has earned, but also to be sent back to the port where he was hired without cost, or, if the master chose, to suitable compensation. He is bound to assist at the salvage if his wages are continued, and to work at the clearing if payment is made to him of the traveling expenses and expenses incurred by the delay that may arise by reason thereof. The seaman may demand his discharge if the master is guilty of a gross violation of his duties togards him, particularly by severe maltreatment or by causeless refusal of meat and drink.

PART OF ARTICLE 547.—In a foreign country a seaman who demands his discharge is not allowed to leave the service without the approval of the consul having competence, (article 537.)

Page 39.]

The act concerning the punishment of seamen of Prussian merchantmen, who avoid the service upon which they have entered, of March 20, 1854.

155 § 1. A seaman who deserts a Prussian merchantman after the agre'ment of hire has been concluded, or who secret's himself in order to avoid the service upon which he has entered, shall be punished with imprisonment for not more than six weeks or with a fine of not more than fifty dollars, if the act committed by him does not call for a more severe punishment in accordance with the Book of Penal Laws or the act for the preservation of discipline of March 31, 1841.

It makes no difference whether the punishable act has been committed in this or a foreign country.

The law concerning the legal rights of the crew on board of vessels of the 26th of March, 1864.

Page 41.] PART SECOND.

Of the preparation of the muster-roll and of the mustering in and discharge.

§ 12. The muster-roll (article 529 of the Book of German Mercantile Law) of a Prussian vessel is prepared by the mustering authorities of the port where the crew are hired.

Particular mustering authorities are appointed for each port. The majority of the members thereof is to consist of persons familiar with navigation and experienced in service on board of vessels.

Where the institution of such mustering authorities has not been practicable, the police authorities of the port are to be considered the mustering authorities.

The minister of commerce is authorized to arrange the mustering authorities and to supply them with instructions.

156 § 13. The mustering-in preceeds the preparation of the muster-roll. The muster-in consists of the introduction of the crew to the mustering authorities by the master or his representative and of the acknowledgement by both parties of the agreement of hire made between them.

The mustering authorities must take a complete protocol of the agreement of hire. The protocol must be signed by the master or his representative, and by each seaman.

§ 14. Each seaman must identify himself as to his individuality by the book of navigation (§ 1.) In so far as the proof of particular qualification for the service which has been assumed, according to existing regulations is required, such proof must also be given.

If the above requirements are not fulfilled, or if the mustering authorities find essential objection as to the validity of the agreement of hire in general, or of separate clauses therein contained, they must refuse their co-operation at the mustering-in, until such objections are removed. This is also to apply in case the mustering authorities ascertain, on the examination to be made by them, that the master has not the prescribed qualifications, or that the hiring of any of the seamen is in opposition to the regulations concerning the military duties.

§ 15. A memorandum of the mustering-in is made by the mustering authorities in the book of navigation of each seaman. This memoran-

dum serves at the same time as a pass permitting departure or sea-pass.

§ 16. After the mustering-in the muster-roll is prepared by the mustering authorities. The muster-roll is to contain—

1. The name and nationality of the vessel;

2. The name and residence of the master;

157 3. The name and the home of each seaman, with the designation of his rank;

4. The literal contents of the protocol of the agreement of hire made between the master and the crew (§ 13.)

5. The clause of preparation, with the seal and signature of the mustering authorities.

Page 42.]

§ 18. The mustering-in of a seaman hired subsequent to the preparation of the muster-roll ensues according to § 13 to § 15 before the mustering authorities of the port, where it can be done soonest.

The mustering authorities must enter the seaman, who is hired subsequent, in the muster-roll, making reference to the protocol taken of his mustering-in, of which the master receives a copy.

If, during the time that the muster-roll is valid, a seaman leaves, this is to be marked in the muster-roll by the mustering authorities before whom he is discharged, (§ 19,) or if he is not discharged, by the mustering authorities of the port where it can be done soonest.

§ 19. After the dismissal, the discharge of the crew before the mustering authorities (§ 12) of the port, where they are dismissed ensues.

The discharge consists of the introduction of the crew to the mustering authorities by the master, by exhibiting the muster-roll, and of the declaration by both parties before said mustering authorities, that the relations between them in the service have been dissolved. On the dismissal, the master must enter into the book of navigation of each seaman a memorandum concerning the rank and circumstances regarding the service of said seaman. The mustering authorities must legalize this memorandum by a certificate of discharge. It is their duty

158 to endeavor to bring about a settlement of any disputes that may exist between the master and the crew.

A brief protocol of the discharge is made by the mustering authorities, the execution of which protocol by the master and crew is not required.

§ 20. If but one seaman is dismissed, his discharge is effected, pursuant to the foregoing sections.

§ 22. In a foreign country the consul mentioned in article 537, of the book of Mercantile Law, assumes the place of the mustering authorities as regards the preparation of the muster-roll, or its completion or alteration, and the mustering-in and discharge. Proof of identity, by a book of navigation, (§14,) is not required in case of mustering-in in a foreign county.

Page 43.]

An act concerning the rights of crews on sea-going vessels of March 26th, 1864, third paragraph:

Of the rights and duties of the crew during the service, as a supplement to article 531, and of the following articles of the book of German Mercantile Law the following is enacted, §25.

To the first paragraph of article 531.

Until the time of his discharge, a seaman is not allowed to leave the vessel without permission of the master. If such permission is granted,

he must return at the specified time, and in any case, if there is no special allowance to the contrary, before 8 o'clock in the evening.

Page 44.]

Part of § 29. If the seaman, by an unbecoming behaviour, causes the captain to use words of rebuke, or to commit slight acts of vio-
159 lence, he cannot demand a judicial satisfaction on that account. The ship boys are subjected to parental chastisement by the captain.

The seaman must be careful to accommodate himself to the arrangements made by the master for the preservation of order and concord on board; actions not in compliance therewith may be punished by the master in accordance with the act of March 31, 1841.

The § 2 of said act is amended as follows:

In case of the threatening of peril to the vessel and of mutiny or violence on part of the crew, the captain, (master,) in order to obtain obedience to his commands, may use all necessary means for this purpose. In all cases the captain is authorized, on account of his disciplinary power (§ 1) to order—

a. Fines to the extent of five thalers, for the benefit of the cash of the poor of the home port of the vessel.

b. Decrease of rations.

c. Imprisonment to the extent of eight days, if necessary, at bread and water.

d. Fastening with irons in the lower portions of the vessel.

Which of these punishments are to be used is to be determined by the captain according to the greater or less culpability.

(Indorsed:) U. S. district court, eastern district of New York. Max. Newman vs. The Bark Elwine Kreplin, her tackle, &c. Translation of part of book of navigation. Salomon & Burke, proctors for claimant. 4 Wall st., N. Y. Ex. 3, C. S. B.

160 *Assignment.*

For and in consideration of the sum of one dollar to each of us severally in hand paid, we hereby sell, assign, transfer, and set over to Max. Newman all our right, title, and interest, and to any wages which may be due us from the bark Elwine Kreplin, in our several capacities, hereby authorizing and empowering our said assignee to take all lawful steps to collect said wages in his own name, and hereby empowering him to do each and every act and thing in the premises the same as we could do, if this assignment had not been made.

Witness our hands and seals this day of August, 1870.

A. MARTENS.	[L. S.]
JUL. KRUSE.	[L. S.]
P. LUETT.	[L. S.]
C. RIECKHOFF.	[L. S.]
C. TARRECT.	[L. S.]
W. SPEITZ.	[L. S.]
A. SCHROEBEKE.	[L. S.]

(Indorsed:) U. S. district court E. D. of New York. Max. Newman vs. The Bark Elwine Kreplin. Agreement. D. & T. McMahon, proctors libl't. Ex. B, C. S. D.

161 *Commitment.*

VILLAGE OF EDGEWATER, *Richmond County, ss:*

To the keeper of the common jail of said county, greeting:

Receive into your custody and safely keep, for further examination, William Speitz, who is charged before me, police justice of the village of Edgewater, in said county, upon the oath of Henry Fisher, with desertion from the bark Elwine Kreplin of the kingdom of Prussia.

Witness my hand this 2d day of August, 1870.

TH. GARRETT,
Police Justice.

(Indorsed:) Police court, before Thomas Garrett, police justice of the village of Edgewater, Richmond County. The People ag'st William Speitz. Commitment for examination. Dated 2d day of August, 1870. Ex. C, C. S. D. Officer, Oscar Romer.

Release for examination.

VILLAGE OF EDGEWATER, *Richmond Co., ss:*

To the keeper of the common jail of said county, greeting:

162 You are hereby commanded forthwith to deliver Max. Newman, a prisoner in your custody, to Isaac Romer to be brought before me at the police court, corner of Bay and Gore streets, village of Edgewater, county aforesaid, for further examination upon a charge of desertion.

Witness my hand this 11th day of August, 1870.

THO'S GARRETT,
Police Justice.

(Indorsed:) Police court. Before Thomas Garrett, police justice of the village of Edgewater, Richmond County. The People against Max. Newman. Release for examination. Dated 11th day of August, 1870. Ex. D. C. S. D. Officer, Isaac Romer.

Exequatur.

Andrew Johnson, President of the United States of America, to all whom it may concern. Satisfactory evidence having been exhibited to me that Johannes Roesing has been appointed consul general of the North German Confederation, to reside in New York, I do hereby recognize him as such, and declare him free to exercise and enjoy such franchises, powers, and privileges as are allowed to consuls general by the law of nations or by the laws of the United States and existing treaty stipulations between the Government of the North German Confederation and the United States.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

163 Given under my hand, at the city of Washington, the [L. S.] 24th day of July, A. D. 1868, and of the independence of the United States of America the 93d.

By the President:

ANDREW JOHNSON.

W'M H. SEWARD,
Secretary of State.

(Indorsed :) Exequatur, recognizing Johannes Roesing as consul general, &c.

Certificate of Secretary of State.

UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come greeting:

I certify that the Executive Department of the Government of the United States recognizing the consuls of the North German Union as consuls of each one of the sovereign states composing the North German Union, the same as if they had been commissioned by each one of such states.

In testimony whereof I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

Done, at the city of Washington, this fourteenth day of November, A. D. 1870, and of the independence of the United States of America the ninety-fifth.

[L. S.] HAMILTON FISH.

(Indorsed:) Certificate of Secretary of State.

164 *Complaint of master before the consul.*

Done, at the consulate general of the North German Union at New York, on the first day of August, 1870.

Captain H. Fisher, master of the North German bark Elwine Kreplin, home port, Barth, appeared and preferred (gave to protocol) the following complaint:

When I was about to leave the ship, which is lying at Staten Island, this morning, I asked the boy, Johann Friederich Heinrich Schroebeke, for my coffee, whereupon he declared that there was none; that he had not been able to build a fire for want of matches; and that, as a general thing, the service of a cook did not suit him, he not being obliged to perform it, having been mustered as a boy and not as a cook. When I caught hold of the ears of Schroebeke, on account of the disobedience, he began to cry out, upon which the entire crew entered the cabin and inquired, "What is the matter? We do not permit that you whip the boy; we are now here in free America, and there such things are not permitted." When I asked the mate, Max. Newman, who had evidently instigated the whole matter, whether the men had no work, he called me a damned vagabond, and when I remonstrated with him for this, he repeated this remark, adding, "Every one takes you to be that." I then left the ship in order to request the assistance of police in this evident mutiny. Judge Garrett, at Staten Island, to whom I went, was not yet to be spoken, and when I hereupon returned on board, the entire crew had left the ship, and the mate, who informed me of this, declared that he would likewise go away, which he *he* really did. Only the cabin watch, Joachim Christian Heinrich Schmidt, who also had not previously participated in the mutiny, remained on board. I thereupon returned to Judge Garrett, who had caused all of the men still on Staten Island to be arrested, and they are now in custody.

I request of the consul general the punishment of all the men,

165 especially of the mate, Newman, who has instigated the complot. Since my life is not safe, I request that the entire crew be kept in custody preliminarily; and, under the existing circumstances, I cannot take the mate back on board.

H. FISHER.

Subsequently the captain declared that he would bear all costs arising from the arrest of the crew.

H. FISHER.
V. KAHN.

(Indorsed:) Translation of the complaint of the master of the Elwine Kreplin, preferred at the consulate general.

Done, at the consulate general of the North German Union at New York, on the first day of August, 1870.

Captain H. Fisher, master of the North German Bark Elwine Kreplin, home port, Barth, appeared and preferred (gave to proctocol,) the following complaint:

When I was about to leave the ship, which is lying at Staten Island, this morning, I asked the boy, Johann Freidrich Schroebeke, for my coffee, whereupon he declared that there was none; that he had not been able to build a fire for want of matches, and that, as a general thing, the service of a cook did not suit him, he not being obliged to perform it, having been mustered as a boy and not as a cook. When I caught hold of the ears of Schroebeke, on account of this disobedience, he began to cry out, upon which the entire crew entered the cabin and inquired, "What is the matter? We do not permit that you whip the boy; we are now here in free America, and there such things are not permitted." When I asked the mate, Max. Newman, who had evidently instigated the whole matter, whether the crew had no work, he called me a
166 damned vagabond, and when I remonstrated with him for this, he repeated this remark, adding, "Every one takes you to be that." I then left the ship, in order to request the assistance of the police in this evident mutiny. Judge Garrett, at Staten Island, to whom I went, was not yet to be spoken, and when I thereupon returned on board, the entire crew had left the ship, and the mate, who informed me of this, declared that he would likewise go away, which he really did. Only the cabin watch, Joachim Christian Heinrich Schmidt, who also had not previously participated in the mutiny, remained on board. I thereupon returned to Judge Garrett, who had caused all the men, still in Staten Island, to be arrested, and they are now in custody.

I request of the consul general the punishment of all the men, especially of the mate Newman, who has instigated the complot. Since my life is not safe, I request that the entire crew be kept in custody preliminarily; and, under the existing circumstances, I cannot take the mate back on board.

r. g. n.
H. FISHER.

Subsequently the captain declared that he would bear all costs arising from the arrest of the crew.

H. FISHER.

o. n. s.
V. KAHN.

(Indorsed:) Translation of the complaint of the master of the Elwine Kreplin, preferred at the consulate general.

167 *Consul's commission.*

We, Wilhelm, by the grace of God, King of Prussia, &c., hereby publish and make known that, after having deemed meet, in the name of the North German Union, to appoint a consul general of the North German Union at New York, we have graciously selected and accepted for that position Dr. Johannes Roesing, who has been praised to us for his knowledge of commercial affairs and other good qualities.

This we do herewith and by these presents in manner following, and thus that he is to protect and forward, so far as practicable, the interests of the North German Union, especially as regards commerce, traffic, and navigation; to see that the treaties are observed, and to grant to the members of the States comprising the Union, and of other friendly States, his advice and assistance concerning their affairs; and, generally, to do and attend to everything prescribed by the laws of the Union and by his instructions, and which becomes and is due to an honest, skillful, and industrious consul of the Union, for which reason we have placed in him our most gracious confidence.

We herewith require, however, all and every one to whom this may be presented, or who must otherwise necessarily know it, to recognize said Dr. Johannes Roesing as consul general of the North German Union, at New York, to pay complying regard to the representations which he may make in that capacity, to grant him all help and assistance which he may require in the execution of his office, also, to allow him all franchises, privileges, and prerogatives enjoyed at that place by the consuls general of other friendly powers; for all which we shall not fail to make proper returns whenever occasions call for them.

In testimony whereof we have personally set our hand to this patent, and have caused the seal of the Union to be hereunto affixed.

168 These done and given at Mayence the 25th of June, 1868.

[SEAL.] WILHELM.

In representation of the chancellor of the Union.

DELBRUECK.

Commission for Dr. Johannes Roesing as consul general of the North German Union at New York.

B. C. A., No 5545.

(Indorsed:) Commission for Dr. Roesing.

Consul's protest.

United States district court for the eastern district of New York. In admiralty.

MAX. NEWMAN, LIBELLANT,
vs.
THE BARK ELWINE KREPLIN.

To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

Henry Fisher, master of the North German bark Elwine Kreplin, has informed me that Max. Newman, mate of said bark, has exhibited to you his libel and complaint against the said bark, to recover certain seamen's wages which he therein claims to be due him and certain

169 other seamen of said bark, and that thereupon said bark has been attached. The master claims that no wages are due to Newman and the other seamen and that Newman and the others are deserters from his vessel.

Therefore I, Johannes Roesing, consul general of the North German Union, residing at the city and port of New York, do hereby respectfully protest against the proceedings in said cause and against the jurisdiction of the district court of the United States for the eastern district of New York, or any other court of the United States, in the matter of difference between the captain and seamen of said bark.

By Article X of the treaty of commerce and navigation between the United States of America and his Majesty the King of Prussia, bearing date the 1st day of May, 1828, the jurisdiction of the matter in difference is rightfully vested in me to the exclusion of the local authorities. In fact, the matter of complaint in said libel set forth had, before the filing of said libel, been adjudicated by me, and I respectfully insist that my adjudication in this matter is binding between the parties, and can only be reviewed by the judicial tribunals of Prussia.

New York, October 13th, 1870.

[L. S.] JOHANNES ROESING,
Consul General.

(Indorsed:) U. S. district court for the eastern district of N. Y. Max. Newman vs. The bark Elwine Kreplin. Consul's protest against jurisdiction.

170 Whereas, heretofore, to wit, on or about the 18th day of August, 1870, William Speitz, Herman Luett, Albert Schroebeke, Charles Rieckhoff, Julius Kreuse, Abraham Martens, and Robert Tarrect, made an assignment to me in the words following, to wit: For and in consideration of the sum of one dollar, to each of us severally in hand paid, we hereby sell, assign, transfer, and set over to Max. Newman all our right, title, and interest in and to any wages which may be due us from the bark Elwine Kreplin, in our several capacities, hereby authorizing and empowering our said assignee to take all lawful steps to collect said wages in his own name, and hereby empowering him to do each and every act and thing in the premises the same as we could do if this assignment had not been made.

Witness our hands and seals this 18th day of August, 1870.

(Signed and sealed.)

And whereas, on the 24th day of August, 1870, I commenced an action, in my own right, and as assignee of said parties, in the district court of the United States in and for the eastern district of New York, against the bark Elwine Kreplin, to collect my wages and theirs; and whereas, on the trial of the case, I filed a stipulation, agreeing to cancel said assignment, so as to permit the said several parties to prosecute the said claims in their own names:

Now, therefore, in consideration of one dollar, to me in hand paid, I do hereby cancel so much of said assignment as conveys to me all and singular the aforesaid claims, and do re-assign said claims to said several parties so that each man shall hold his own claim back again; but I do not cancel the power of attorney given to me in said assignment.

N. Y., Dec. 31, 1870.

M. NEWMAN. [L. S.]

171 We hereby accept the within cancel'ation, but continue the the power of attorney given in said judgment.

A. MARTENS. [L. S.]
ALBERT SCHROEBEKE. [L. S.]
HERMAN LUETT. [L. S.]

N. Y., Dec. 31, 1870.
In the presence of—
D. McMAHON, JR.

(Indorsed:) United States district court, eastern district of New York. Max. Newman vs. The Ship Elwine Kreplin, &c. Cancel'ation of assignment. D. & T. McMahon, proctors, libellants.

Eastern district of New York, United States district court. In admiralty.

To the Honorable Chas. L. Benedict, judge of the United States district court in and for the eastern district of New York:

The petition of Julius Kreuse, William Speitz, Charles Rieckhoff, and Robert Tarrect, by Max Newman, their attorney, respectfully showeth:

That, in the month of March, 1869, the vessel Elwine Kreplin, whereof one Fisher was master, being at the port of Pillau, in Prussia, he, the said Fisher, by himself or his agent, on the high seas, and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, did hire and ship your peti-
172 tioners, Julius Kreuse and Charles Rieckhoff, to serve as seamen on board of said vessel, for and during the period of two years from said shipment, at the monthly compensation of $12, Prussian silver coin.

That, in the month of June, 1869, the said vessel, whereof said Fisher was master, being at said Prussian port of Pillau, he, the said Fisher, by himself or his agent, on the high seas, and within the ebb and flow of the tide, and the admiralty and maritime jurisdiction of this court, did hire and ship your petitioners, William Speitz and Robert Tarrect, to serve as seamen on board of said vessel, for and during the space of two years from said hiring, at the monthly compensation of $13 Prussian silver coin, for said Speitz, and $12 Prussian silver coin per month for said Tarrect.

That your petitioners, in pursuance of their several contracts of hiring, on or about the time of the execution thereof, went on board of said vessel, and entered into the service of the said master as aforesaid.

That the said vessel, having taken on board cargoes of goods, made divers voyages with all of said mariners on board, and made freight, and that the said several mariners continued on board and in the service of the said vessel from the time of their several hirings as aforesaid until the 1st day of August, 1870, when they were all discharged from said vessel.

That during the whole time they were in the service of the said vessel, to wit, from the time when they went on board of the same until the time of their discharge therefrom, they well and truly performed their duty according to the best of their ability, and were obedient to the lawful commands of their master and the other officers of said vessel.

And your petitioners further showeth that, at the time they were discharged from the said vessel, the wages earned by them as aforesaid were not paid to them, or any part thereof, except the sum of

173 $326, Prussian money, and there is now due unto them, by reason of said services, the sum of $277 88, American money.

That, subsequent to the said discharge, your petitioners, with others of the crew of said vessel, assigned their claims for wages to one Max. Newman, mate of said vessel, and suit was commenced by said Newman for his own wages and also as assignee of said claims against the said vessel; that judgment was recovered in favor of the right of the seamen on board said vessel to recover the amount of their wages, and that on the cancel'ation of said assignment they might be allowed on petition to join as co-libellants with the said Max. Newman.

And your petitioners further aver that the said assignment has been canceled, and they now, pursuant to said decision, pray this honorable court that they may be made co-libellants with the said Max. Newman, nunc pro tunc, and be entitled to the benefit of the said decree in the same manner and with like effect as if they had originally been joined as co-libellants with said Max. Newman, and that your petitioners may recover their said wages and their costs on this behalf most wrongfully sustained. And your petitioners will ever pray, &c.

JULIUS KREUSE,
WILLIAM SPEITZ,
ROBERT TARRECT,
CHARLES RIECKHOFF,
By M. NEWMAN,
Their Attorney.

Sworn to before me this 9th day of January.

D. C. WINSLOW,
U. S. Commissioner.

174 (Indorsed:) U. S. district court. Max. Newman vs. The Ship Elwine Kreplin, her tackle, &c. Petition to be made co-libellants. D. & T. McMahon, proctors lib'l'ts, &c., pet'r. Filed January 9th, 1871.

Eastern district of New York, United States district court. In admiralty.

To the Hon. Cha's L. Benedict, judge of the United States district court in and for the eastern district of New York:

The petition of Herman Luett respectfully showeth:

That, in the month of March, 1869, the said vessel, whereof he, the said Fisher, was master, being at the Port of Barth, in Prussia, he, the said Fisher, by himself or his agent, on the high seas and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, did hire and ship your petititioner to serve as seaman on board of said vessel, for and during the period of two years from said shipment, at the monthly compensation of 12 Prussian silver dollars, as will more fully appear by the shipping articles signed by him.

That, in pursuance of his said contract of hiring, on or about the execution thereof, your petitioner went on board of said vessel and entered into the service of the said master as aforesaid. That the said vessel, having taken on board a cargo of goods, made divers voyages with your petitioner on board and made freight, and that the said Luett continued on board of and in the service of the said vessel from the time
175 of his said shipment until the 1st day of August, 1870, when he was discharged from said vessel.

That during the whole time he was in the service of the said vessel, the Elwine Kreplin, to wit, from the time when they went on board of said vessel until discharge therefrom, he well and truly performed the duties appertaining to the position he shipped to fulfill, according to the best of his ability, and was obedient to the lawful commands ot the master and officers of said vessel.

Your petitioner further shows that, at the time he was discharged as aforesaid, the wages earned by him as above mentioned were not paid, nor any part thereof, except the sum of $62\frac{1}{3}$, Prussian coin, and there is now due unto your petitioner by reason of said services the sum of $140, Prussian coin, which the owners of the said vessel hitherto hath altogether refused and still doth refuse to pay.

That subsequent to the said discharge your petitioner, with others of the crew of said vessel, assigned his claim for wages to one Max. Newman, mate of said vessel, and suit was commenced by said Newman for his own wages, and also as assignee of said claim against the said vessel.

That judgment was recovered in favor of the right of the seamen on board said vessel to recover the amount of their wages, and that said seamen on canceling said assignment might be allowed on petition to join as co-libellants with the said Max. Newman; and your petitioner further avers that, by mutual consent, the said assignment was canceled, and he now, pursuant to said decision, prays this honorable court that he may be made a co-libellant with the said Max. Newman nunc pro tunc, and be entitled to the benefit of the said decree in the same manner and with like effect as if he had originally been joined as a libellant with said Max. Newman, and that your petitioner may recover his said
176 wages and his costs on this behalf most wrongfully sustained.

And your petititioner will ever pray.

HERMAN LUETT.

Sworn to before me this 29th day of Dec., 1870.

EDWARD L. OWEN,
U. S. Commissioner.

(Indorsed:) U. S. Supreme Court, eastern district of New York. Newman vs. The Kreplin, her tackle, &c. Petition to be made co-libellant. D. & T. McMahon, lib't pet'r' proctor. Filed January 3d, 1871.

Eastern district of New York, United States district court. In admiralty.

To the Hon. CHARLES L. BENEDICT,
Judge of the United States district court,
in and for the eastern district of New York:

The petition of Albert Schroebeke respectfully showeth that, in the month of March, 1869, the ship Elwine Kreplin, whereof one Henry Fisher was master, being at the port of Barth, in the Kingdom of Prussia, he, the said Fisher, by himself or his agent, on the high seas,
177 and within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, did hire and ship your petitioner to serve as a boy on board of said vessel, for and during the period of two years from said shipment, at the monthly compensation of 9 Prussian silver dollars, as will more fully appear from the shipping articles signed by your petitioner; that, in pursuance thereof, on or about the execution of said contract of ship

ment, your petitioner went on board of said vessel, and entered into the service of the said master, as aforesaid; that the said vessel, having taken on board a cargo of goods, made divers voyages with your petitioner on board, and made freight; and that your petitioner continued on board of and in the service of the said vessel from the time of his aforesaid shipment until the first day of August, when he was discharged from said vessel; that, during the whole time your petitioner was on board of said vessel, to wit, from his aforesaid shipment until his discharge therefrom, he well and truly performed the duties appertaining to the position he shipped to fulfill, according to the best of his ability, and was obedient to the lawful commands of the master and the other officers of said vessel.

Your petitioner further shows that, at the time of his said discharge from said vessel, the wages earned by him as aforesaid were not paid to him, nor any part thereof, excepting the sum of $50\frac{1}{3}$, Prussian coin, and there is now due unto him, by reason of said services, the sum of $101\frac{1}{3}$, Prussian coin, which the owners of said vessel hitherto hath altogether refused, and still doth refuse, to pay, although often requested by your petitioner to pay the same; that subsequent to the said discharge your petitioner, with others of the crew of said vessel, assigned his claim for wages to one Max. Newman, mate of said vessel, and
178 suit was commenced by said Newman for his own wages, and also as assignee of said claim against the said vessel; that judgment was recovered in favor of the right of the seaman on board said vessel to recover the amount of their wages, and that said seaman, on cancelling said assignment might be allowed, on petition, to join as co-libellants with the said Max. Newman. And your petitioner further avers that, by mutual consent, the said assignment was cancelled, and he now, pursuant to said decision, prays this honorable court that he may be made a co-libellant with the said Max. Newman, nunc pro tunc, and be entitled to the benefit of the said decree in the same manner and with like effect as if he had originally been joined as a libellant with said Max. Newman, and that your petitioner may recover his said wages and his costs in this behalf most wrongfully sustained.

And your petitioner will ever pray, &c.

ALBERT SCHROEBEKE.

Sworn to before me this 29th day of Dec., 1870.

EDWARD L. OWEN,
U. S. Commissioner.

(Indorsed:) U. S. district court, E. D. of New York. Max. Newman vs. The Kreplin, &c. Petition to be made co-libellant. D. & T. McMahon, proctors. Filed January 3d, 1871.

179 Eastern district of New York, United States district court. In admiralty.

To the Hon. Charles L. Benedict, judge of the United States district court in and for the eastern district of New York:

The petition of Abraham Martens respectfully shows unto this honorable court:

That, in the month of June, 1868, the ship Elwine Kreplin, whereof one Henry Fisher was master, being at the port of Trieste, in the Adriatic Sea, he, the said Fisher, by himself or his agent, on the high seas and

within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this court, did hire and ship your petitioner to serve as carpenter on board of said vessel for and during the space of two years from the date of said shipment, with condition that, in case he so desired, he, the said Martens, could, of his own free will, leave said vessel at the termination of any one particular voyage, as will more fully appear from the shipping articles signed by your libellant, in which his contract for said voyages is fully set forth at the monthly compensation of 21 Prussian silver dollars.

That, in pursuance of said contract of hiring, on or about the execution thereof, the said Martens went on board of said vessel and entered into the service of the said master as aforesaid.

That the said vessel, having taken on board a cargo of goods, made divers voyages with your libellant on board, and made freight, and that the said Martens continued on board of and in the service of the said vessel from the time of his said hiring as aforesaid until the 1st day of August, 1870, when he was discharged from said vessel.

That, during the whole time your petitioner was in the service
180 of the said vessel, the Elwine Kreplin, to wit, from the time when he went on board of said vessel until the time of his discharge therefrom, he well and truly performed the duties appertaining to the position he shipped to fulfill, according to the best of his ability, and was obedient the lawful commands of his master and the other officers of said vessel.

That, at the time your petitioner was discharged as aforesaid, the wages earned by him as above mentioned were not paid to him, except the sum of $333\frac{1}{3}$, Prussian coin, and there is now justly due to your petitioner, by reason of said services, the sum of $215\frac{1}{3}$, Prussian coin.

That, subsequent to the said discharge, your petitioner, with others of the crew of said vessel, assigned his claim for wages to one Max. Newman, mate of said vessel, and suit was commenced by said Newman for his own wages, and also as assignee of said claim against the said vessel.

That judgment was recovered in favor of the right of the seamen on board said vessel to recover the amount of their wages, and that said seamen, on cancelling said assignment, might be allowed on petition to join as co-libellants with the said Max. Newman; and your petitioner further avers that, by mutual consent, the said assignment was cancelled, and he now, pursuant to said decision, prays this honorable court that he may be made a co-libellant with the said Max. Newman, nunc pro tunc, and be entitled to the benefit of the said decree in the same manner and with like effect as if he had originally been joined as a libellant with said Max. Newman, and that your petitioner may recover his said wages and his costs in this behalf most wrongfully sustained.

And your petitioner will ever pray, &c.

ABRAHAM MARTENS.

181 Sworn to before me this 29th day of September, 1870.

EDWARD L. OWENS,
U. S. Commissioner.

(Indorsed:) U. S. district court, southern district of New York. Newman vs. The Kreplin, her tackle, &c. Petition to be made co-libellant. D. & T. McMahon, lib'l'ts & pet'rs' proctors. Filed January 2d, 1871.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-room, in the city of Brooklyn, on Tuesday, the 10th day of January, in the year of our Lord one thousand eight hundred and seventy-one—

Present, the Honorable Charles L. Benedict, district judge.

MAX. NEWMAN, LIBELLANT,
ag't
THE SHIP ELWINE KREPLIN, &C., CLAIMANTS.

On reading and filing the petitions of Albert Schroebeke, Her-
182 man Luett, Abraham Martens, William Speitz, Robert Tarrect, Charles Reickhoff, and Julius Kreuse, to be made co-libellant herein, and the cancellation of the assignment made by said petitioners to Max. Newman, of their claims for wages against The Ship Elwine Kreplin, and, on motion of D. & T. McMahon, proctors for libellant and petitioners, ordered that the said Schroebeke, Luett, Martens, Speitz, Tarrect, Reickhoff, and Kreuse be, and they hereby are, made co-libellants with the said Max Newman in the above-entitled action, pursuant to the judgment heretofore rendered in said action.

CHARLES L. BENEDICT.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 19th day of January, in the year of our Lord one thousand eight hundred and seventy-one—

Present, the Honorable Charles L. Benedict, district judge.

MAX. NEWMAN, LIBELLANT; ABRAHAM MARtens, Robert Tarrect, Charles Reickhoff, Albert Schroebeke, Julius Kreuse, William Speitz, and Herman Luett, co-libellants,
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &c.

This cause having been heard on pleadings and proofs, and
183 argued and submitted on briefs and points by the advocates of the respective parties, and due liberation being had in the premises, and this court having delivered its opinion, that the above-named libellant recover for the amount of wages due him from said vessel, and having also delivered its opinion that the other seamen of said vessel recover the wages due them from said vessel, on condition that the assignment made by them to the libellant should be cancelled, and that they should file their petitions to be made co-libellants, and said cancellation having been made, and said petition filed in pursuance of said judgment, and an order having been obtained, making said seamen co-libellants in said action, it is now ordered, adjudged, and decreed that the libellant and the said co-libellants respectively recover in this action against The Bark Elwine Kreplin, her tackle, &c., the amount of the wages due them respectively from said bark for the voyage and services set forth in the libel in this action, with their costs to be taxed, and that it be referred to a commissioner of this court to ascertain and compute the amount of such wages, and report thereon to this court with all convenient speed.

CHARLES L. BENEDICT.

United States district court, eastern district of New York.

MAX. NEWMAN ET AL.
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &c.

In pursuance of a decretal order entered in the above-entitled
184 action on the 18th day of January, one thousand eight hundred and seventy-one, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount of wages due the libellant by reason of the causes set forth in the libel in this action, and to report thereon to this court with all convenient speed:

I, Edward L. Owen, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the respective parties, and witnesses, and have taken and examined the testimony offered in support of the libellants' claims, and in opposition thereto, and do find that there is due to the libellants, by reason of the causes in the libel mentioned, the sums following, viz:

Amount of wages due libellant Newman	$145 37	
Int. on $145 37 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	4 91	$150 28
Amount of wages due libellant Martens	$142 47	
Int. on $142 47 from 24th day of August, 1870, to date of the commencement of the action, to 18th February, 1871	4 81	$147 28
Amount of wages due libellant Kreuse	$79 45	
Int. on $79 45 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	2 68	$82 13
Amount of wages due libellant Rieckhoff	$90 79	
185 Int. on $90 79 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	3 07	$93 86
Amount of wages due libellant Luett	$100 54	
Int. on $100 54 from 25th day of August, 1870 date of the commencement of the action, to 18th February, 1871	3 40	$103 94
Amount of wages due libellant Speitz	$35 41	
Int. on $35 41 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	1 19	$36 60
Amount of wages due libellant Tarrect	$54 96	
Int. on $54 96 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	1 85	$66 81

Amount of wages due libellant Shroebeke.....	$70 53	
Int. on $70 53 from 24th day of August, 1879, date of the commencement of the action, to 18th of February, 1871.....	2 38	
		$72 49
		$743 81

186 Making the whole amount I find due to the libellants the sum of seven hundred and forty-three dollars and eighty-one cents.

All of which is respectfully submitted.

Dated New York, February 18th, 1871.

EDWARD L. OWEN,
U. S. Commissioner.

Filed February 23d, 1871.

(Indorsed:) U. S. district court, eastern district. Max. Newman et al. vs. The Bark Elwine Kreplin, her tackle, &c. Commissioner's report. Filed February 23d, 1871.

Notice of reference.

District court of the United States for the eastern district of New York.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &C.

In conformity with the order entered in the above-entitled cause, you will please to take notice that the reference ordered therein will be proceeded with before me, a commissioner duly appointed by the circuit court of the United States for the eastern district of New York,
187 under and by virtue of the acts of Congress in such cases made and provided, at my office at the United States court buildings, at No. 71 Wall street, in the city of New York, on the twenty-sixth day of January, at 3 o'clock in the afternoon of that day, at which time and place you are hereby notified to attend, with the testimony you may have to offer in the matter referred.

Dated Brooklyn, the 25th day January, A. D. 1871.

Yours, &c.,

EDWARD L. OWEN,
United States Commissioner, duly appointed by the Circuit Court of the United States, for the Eastern District of New York in the Second Circuit.

CITY AND COUNTY OF NEW YORK, *ss:*

John Kenny, being duly sworn, saith that, on the 25th day of January, 1871, at No. 4 Wall street, in said city, he served the hereto annexed notice "on Messrs. Salomon & Burke, defendants' attorneys herein, by delivering to a Mr. Burke, one of said firm, a copy of the same, and leaving the same with him.

J. KENNEY.

Sworn to before me this 26th day of January, 1871.

P. W. HAWLEY,
Notary Public, N. Y. Co.

United States district court, eastern district of New York.

MAX. NEWMAN ET AL.
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &c.

In pursuance of a decretal order entered in the above-entitled
184 action on the 18th day of January, one thousand eight hundred and seventy-one, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount of wages due the libellant by reason of the causes set forth in the libel in this action, and to report thereon to this court with all convenient speed:

I, Edward L. Owen, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the respective parties, and witnesses, and have taken and examined the testimony offered in support of the libellants' claims, and in opposition thereto, and do find that there is due to the libellants, by reason of the causes in the libel mentioned, the sums following, viz:

Amount of wages due libellant Newman	$145 37	
Int. on $145 37 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	4 91	$150 28
Amount of wages due libellant Martens	$142 47	
Int. on $142 47 from 24th day of August, 1870, to date of the commencement of the action, to 18th February, 1871	4 81	$147 28
Amount of wages due libellant Kreuse	$79 45	
Int. on $79 45 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	2 68	$82 13
Amount of wages due libellant Rieckhoff	$90 79	
185 Int. on $90 79 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	3 07	$93 86
Amount of wages due libellant Luett	$100 54	
Int. on $100 54 from 25th day of August, 1870 date of the commencement of the action, to 18th February, 1871	3 40	$103 94
Amount of wages due libellant Speitz	$35 41	
Int. on $35 41 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	1 19	$36 60
Amount of wages due libellant Tarrect	$54 96	
Int. on $54 96 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	1 85	$66 81

Amount of wages due libellant Shroebeke.....	$70 53	
Int. on $70 53 from 24th day of August, 1879, date of the commencement of the action, to 18th of February, 1871.....	2 38	
		$72 49
		$743 81

186 Making the whole amount I find due to the libellants the sum of seven hundred and forty-three dollars and eighty-one cents.

All of which is respectfully submitted.

Dated New York, February 18th, 1871.

EDWARD L. OWEN,
U. S. Commissioner.

Filed February 23d, 1871.

(Indorsed:) U. S. district court, eastern district. Max. Newman et al. vs. The Bark Elwine Kreplin, her tackle, &c. Commissioner's report. Filed February 23d, 1871.

Notice of reference.

District court of the United States for the eastern district of New York.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &C.

In conformity with the order entered in the above-entitled cause, you will please to take notice that the reference ordered therein will be proceeded with before me, a commissioner duly appointed by the circuit court of the United States for the eastern district of New York,
187 under and by virtue of the acts of Congress in such cases made and provided, at my office at the United States court buildings, at No. 71 Wall street, in the city of New York, on the twenty-sixth day of January, at 3 o'clock in the afternoon of that day, at which time and place you are hereby notified to attend, with the testimony you may have to offer in the matter referred.

Dated Brooklyn, the 25th day January, A. D. 1871.

Yours, &c.,

EDWARD L. OWEN,
United States Commissioner, duly appointed by the Circuit Court of the United States, for the Eastern District of New York in the Second Circuit.

CITY AND COUNTY OF NEW YORK, *ss:*

John Kenny, being duly sworn, saith that, on the 25th day of January, 1871, at No. 4 Wall street, in said city, he served the hereto annexed notice "on Messrs. Salomon & Burke, defendants' attorneys herein, by delivering to a Mr. Burke, one of said firm, a copy of the same, and leaving the same with him.

J. KENNEY.

Sworn to before me this 26th day of January, 1871.

P. W. HAWLEY,
Notary Public, N. Y. Co.

United States district court, eastern district of New York.

MAX. NEWMAN ET AL.
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &c.

In pursuance of a decretal order entered in the above-entitled
184 action on the 18th day of January, one thousand eight hundred and seventy-one, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount of wages due the libellant by reason of the causes set forth in the libel in this action, and to report thereon to this court with all convenient speed:

I, Edward L. Owen, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the respective parties, and witnesses, and have taken and examined the testimony offered in support of the libellants' claims, and in opposition thereto, and do find that there is due to the libellants, by reason of the causes in the libel mentioned, the sums following, viz:

Amount of wages due libellant Newman	$145 37	
Int. on $145 37 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	4 91	
		$150 28
Amount of wages due libellant Martens	$142 47	
Int. on $142 47 from 24th day of August, 1870, to date of the commencement of the action, to 18th February, 1871	4 81	
		$147 28
Amount of wages due libellant Kreuse	$79 45	
Int. on $79 45 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	2 68	
		$82 13
Amount of wages due libellant Rieckhoff	$90 79	
185 Int. on $90 79 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	3 07	
		$93 86
Amount of wages due libellant Luett	$100 54	
Int. on $100 54 from 25th day of August, 1870 date of the commencement of the action, to 18th February, 1871	3 40	
		$103 94
Amount of wages due libellant Speitz	$35 41	
Int. on $35 41 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	1 19	
		$36 60
Amount of wages due libellant Tarrect	$54 96	
Int. on $54 96 from 24th day of August, 1870, date of the commencement of the action, to 18th February, 1871	1 85	
		$66 81

Amount of wages due libellant Shroebeke.....	$70 53	
Int. on $70 53 from 24th day of August, 1879, date of the commencement of the action, to 18th of February, 1871.....	2 38	
		$72 49
		$743 81

186 Making the whole amount I find due to the libellants the sum of seven hundred and forty-three dollars and eighty-one cents.

All of which is respectfully submitted.

Dated New York, February 18th, 1871.

EDWARD L. OWEN,
U. S. Commissioner.

Filed February 23d, 1871.

(Indorsed:) U. S. district court, eastern district. Max. Newman et al. vs. The Bark Elwine Kreplin, her tackle, &c. Commissioner's report. Filed February 23d, 1871.

Notice of reference.

District court of the United States for the eastern district of New York.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &C.

In conformity with the order entered in the above-entitled cause, you will please to take notice that the reference ordered therein will be proceeded with before me, a commissioner duly appointed by the circuit court of the United States for the eastern district of New York,
187 under and by virtue of the acts of Congress in such cases made and provided, at my office at the United States court buildings, at No. 71 Wall street, in the city of New York, on the twenty-sixth day of January, at 3 o'clock in the afternoon of that day, at which time and place you are hereby notified to attend, with the testimony you may have to offer in the matter referred.

Dated Brooklyn, the 25th day January, A. D. 1871.

Yours, &c.,

EDWARD L. OWEN,
United States Commissioner, duly appointed by the Circuit Court of the United States, for the Eastern District of New York in the Second Circuit.

CITY AND COUNTY OF NEW YORK, *ss:*

John Kenny, being duly sworn, saith that, on the 25th day of January, 1871, at No. 4 Wall street, in said city, he served the hereto annexed notice "on Messrs. Salomon & Burke, defendants' attorneys herein, by delivering to a Mr. Burke, one of said firm, a copy of the same, and leaving the same with him.

J. KENNEY.

Sworn to before me this 26th day of January, 1871.

P. W. HAWLEY,
Notary Public, N. Y. Co.

mate or mates of German vessels having charge of the receipt and delivery of cargo with loss of any portion of it?

(Question objected to; taken subject to objection.)

A. Yes.

Q. What is it?

(Question objected to; taken subject to objection.)

192 A. The mate is answerable for any short delivery of cargo. That is the general Prussian shipping-law. I had to pay for that lead to consignee, Lucius Hart & Co., $19 55, in gold, or $23 65 in currency. I received a bill for this amount and presented it to the mate. He asked if I would allow him to go to Hart & Co. and see about or arrange about it, I forget which. He kept the bill and made no objection to paying nor having it deducted from his wages. I made an entry in the log-book about the loss of the lead, and having charged it to Newman.

(Counsel for libellant objects to all evidence about the loss of the lead. Same taken subject to objection.)

Reference adjourned to February 3d, at 3 p. m.

FEBRUARY 3D, 1870.

Present, parties.

I fined the mate three times. The first fine was 5 thalers, on the 16th March, 1870; the second, the 17th, 2 thalers; and the last, 14th April, 5 thalers; they were all for dereliction of duty, making a total of 12 thalers.

(It is admitted that the translation on file is a correct translation of the shipping articles.)

I know of an agreement in writing by which I was to pay 10 thalers per month to his order. I gave that agreement to the carpenter. I came home in January, 1869, and settled with my owners, and found there was paid 10 thalers per month to the carpenter's family; there were five payments made, the first being made on the 8th of August, 1868, the last 8th December, 1868. It was paid by the owner of the vessel to the carpenter's mother.

193 Q. By whose order was the $50 paid?

(Objected to, unless he shows that it was paid of his own knowledge; overruled; exception.)

A. By the carpenter's order.

Q. When you arrived home, subsequent to December, 1868, did you have any account with your owner?

A. Yes; I had.

Q. In that account were you charged with the $50, or was the ship charged with it, for the payment to the mother or family of the carpenter?

(Objected to; overruled; exception.)

A. Yes; the ship was charged with fifty dollars. I have had conversation with the carpenter in reference to the payment of this money. In 1869, in the month of April, before leaving Pillau, the carpenter was aboard again. I told him that old order I gave him was paid until the 8th December, and the owner wanted me, if the carpenter wanted that order renewed, to give me a new order. He said, "I don't care; you had better pay me the amount due to me," which I did; this was on the old voyage, before I started from Pillau. I paid him in full up to the time I started on the new voyage, which commenced April 4, 1869. He never objected to what I said to him about the fifty dollars. I did

make up his account in my account-book and paid him his money. He was satisfied with it; he did not object to it.

(Account marked "B" shown to the witness.)

It is a true and correct statement of the carpenter's account.

Cross-examined:

194 When I spoke to the mate about the loss of the lead on board, I told him that the receiver of the lead had found three pieces short delivery. He said, yes, we had three pieces short. I did not have any further conversation.

(Counsel for claimants admit that they have no proof that the mate actually embezzled the lead spoken of.)

The first and last time I fined the mate I made an entry in my log-book. I also told him of it.

Ref. adjourned to the 6th of February, at 10½.

FEBRUARY 6TH, 1871.

Present, parties.

(All evidence as to the loss of the lead excluded on the ground that there is no provision in the shipping articles by which the mate is made liable; and, further, from the fact that the claimants have no proof of the actual embezzlement by the mate, and that the same happened through his neglect.

The counsel for claimants objects; contends that, by the general Prussian law, the mate is liable for such loss.)

I fined the mate, on the 16th of March, 1870, at Marseilles, for leaving the vessel against my orders. I told him not to leave the vessel. I can't remember what I said to him, because it is so long ago. I am very sure that I told him not to leave the vessel. I think I told the mate of having fined him. I don't know why I think I told him; but I took the log-book from him, entered it, and handed it to him.

Q. You don't know, then, whether or not you spoke to the mate on that occasion as having fined him?

A. I think I did. I fined him the second time, on the 17th of the same month, at Marseilles. I fined him for giving me a disrespectful answer. He said he had given himself to go ashore, and that I knew well enough that he was going every Wednesday. He came on deck in slippers, and I told him to come on deck with boots on;
195 and he answered me that he had no boots. Then I said, "You have boots to go on shore." He said, "Yes, I have boots to wear on shore, but not to wear on the ship's deck." He said something else disrespectful that I did not remark in the log-book. That is all he said. The slippers were in such a state as not to be fit to be worn on deck. He took off his slippers; went out of service at 7 a. m., and returned at 8 in the morning. I allowed him to go ashore at 1½ after dinner. He went ashore at 1½ *a.* m., and returned at 5 p. m. I can't remember whether I told him that I had fined him; but I took the log-book, made the entry, handed it back to him. I fined him the third time, on the 14th of April, at Marseilles, for leaving the vessel against my orders. I had no conversation with him that I remember. I told him not to go ashore, but I can't remember what I said beyond this. He went ashore. I don't recollect what he said to me. All the fines are entered in the log-book. The amount of the first fine was 5 thalers, the second was 2 thalers, and the third five thalers. I had a settlement with the carpenter at Pillau, on board the ship. He asked me about his money—what then was due to him. I gave him an order to the owner of the

vessel for the sum of 40 thalers. I don't remember what else was said. I only know that he was satisfied. (Last part of answer objected to by libellant as not responsive.) That is all that I did on that occasion. I don't recollect what else I said. I can't tell who paid him his money on that occasion. I filled out an order to Mr. Rodburtus, and I think he paid it. The $50 was paid, by my order, by Mr. Rodburtus. I know Mr. Rodburtus paid it, because I settled with him, and that was in the ship's account. The account was written.

(Counsel for libellants moves to strike out all evidence about the account, unless the account itself is produced.

Commissioner declines to pass upon the motion at the present.

196 Counsel for libellants excepts to the commissioner refusing to pass upon the motion now.)

I cannot tell whether I had a settlement in full with the carpenter on that occasion of paying him 40 thalers; I counted up his wages, what was due him, and found about 40 thalers was due him; I can't say whether that was the exact amount; there could not have been more than a thaler more due him.

Re-direct:

The mate kept the log in connection with me and had access to it at all times; he never made any complaint about my having fined him; I told the carpenter that this forty dollars had been paid to his family, and asked him whether he wanted the payments still continued; he said, "Oh, no, I don't care; you had better give me the amount due me, and I will send it to them;" he never made any objection to my having paid this pursuant to his order; it was at Martens' request that this payment was made to his family.

Re-cross-examination:

The conversation above spoken of was had with the carpenter on or about the second of April, 1869, in Pillau, on board the vessel; I can't remember whether I told the mate or not that he was fined, but I think I did.

H. FISHER.

ABRAHAM MARTENS, recalled for libellants, says:

I did not have a conversation with the captain, in Pillau, on 2d April, about the payment of that fifty dollars to my family; he did not tell me at that time and place that the fifty dollars had been paid to my family, nor at any time and place that I remember; he paid me forty

197 dollars, and said he would give me a paper that my mother would get more money; nothing else was said on that occasion in reference to this matter; I am sure that he said nothing to me on that occasion about the payment of the fifty dollars to my mother or my family; I saw my mother about that time, and the rest of the family.

A. MARTENS.

MAX. NEWMAN, recalled for libellants, says:

I left the vessel without the captain's permission the first time I was fined, but the captain was not on board; he did not order me not to go ashore; I was not ordered not to go ashore on the occasion I was fined two thalers; he said to me on this last occasion, if those were the shoes or slippers that are fit to come on deck with; I said to him, yes, I had

no better; then he commenced calling me names, and I repeated them back to him; I don't know anything about the third fine; when the captain was aboard I always asked for permission; when he was not, I went ashore when the ship was safe, and when I wanted to; he never mentioned to me that he fined me. I have followed the sea thirteen years, of which time I have been a mate four years; during all of that time I have sailed on German vessels.

Q. Is it or not necessary for the captain to inform his crew when he fines them, having done so according to the general rule and regulations of the Prussian marine service?

(Objected to; sustained; exception.)

Counsel for libellants offered to prove that, by the rule and regulations of the Prussian maritime service, the captain is obliged to inform his crew of having fined them at the time he has done so; offer withdrawn.

198 Cross-examined:

I kept the log-book in conjunction with the captain; had access to it at all times up to the first of August, 1870, when I left the vessel; I never saw the entries of fining me except the first five dollars.

Re-direct:

(Account shown witness.) It is the account kept between the captain and myself, containing the different deductions made from my wages. (Same offered in evidence and marked Ex. 1, E. L. O.) It is in the captain's handwriting.

M. NEWMAN.

MARTENS recalled:

(Account-book shown witness.) It is a correct statement of the account between the captain and myself; it is all in the captain's handwriting, excepting the last part, which consists of two or three lines of memorandum in my handwriting. (Same is offered in evidence marked Ex. 2, E. L. O.)

A. MARTENS.

It is stipulated and agreed by and between the parties that a Prussian thaler is worth 78 cents, U. S. currency.

In case the commissioner finds that the 50 thalers should be deducted from Martens' account, then it is agreed that there is due him 132 thalers 19 silver groshen and 9 pfennig; otherwise there is due 182–19–9.

199 In case the commissioner finds that the fine should be deducted from Newman's account, then it is agreed that there is due him 186–11–6; otherwise, 198–11–6.

The value of the lead is 27 thalers 17 sg. 9 pf.; so that, in case the claimants are entitled to have the lead and the fines deducted from the mate's wages, there will be due him, 158 thalers, 25 sg. 9 pf.

Reference closed.

U. S. district court.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &c.

It is hereby stipulated and agreed that the value of a silver groshen, in

American currency, is two and three-fifths cents; and that the value of a pfennig, in the same currency, is thirteen-sixtieths of a cent.

Dated N. Y., February, 1870.

SALOMON & BURKE,
Claimants' Proctors.
D. & T. McMAHON,
Pro's Lib'ts.

U. S. district.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &C.

200 We hereby concede that twelve pfennigs are equal to one silver groshen, and that thirty silver groshen are equal to one thaler, Prussian currency.

New York, 15 February, 1871.

SALOMON & BURKE,
Proctors for Claimants.
D. & T. McMAHON,
Proc's Lib'ts.

(Indorsed:) U. district court. Max. Newman vs. The Bark Elwine Kreplin, &c. Testimony on reference. Filed March 1st, 1871.

District court of the United States for the eastern district of New York

MAX NEWMAN
against
THE BARK ELWINE KREPLIN, HER TACKLE, &C.

Exceptions on the part of the claimant to the report of Edward L. Owen, esq., a United States commissioner in this cause, dated February 24th, 1871.

FIRST EXCEPTION. That the said commissioner did not allow
201 to the claimant the sum of 50 thalers, Prussian currency, paid by him to the petitioner, or co-libellant, Abraham Martens.

SECOND EXCEPTION. That the said commissioner has reported a balance due said petitioner or co-libellant of $147 28, instead of a balance of $108 28, as shown by the proofs.

THIRD EXCEPTION. That the said commissioner erred in striking out the testimony of Henry Fisher, the master of the bark, relating to the loss of a part of the cargo of said vessel; and in declining to receive any evidence of the laws of the Kingdom of Prussia, and the maritime customs thereof, showing the liability of the libellant, Max. Newman, for such loss, and in rejecting all offers of the claimant to prove that, according to such loss and customs, such liability existed.

SALOMON & BURKE,
Proctors for Claimant.

(Indorsed:) U. S. district court. Max. Newman vs. The Bark Elwine Kreplin, her tackle, &c. Exceptions to commissioner's report. Salomon & Burke, proctors for claimant. Filed February 24th, 1871.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the day of April, in the year of our Lord one thousand eight hundred and seventy-one—

202 Present, the Honorable Charles L. Benedict, district judge.

MAX. NEWMAN, LIBELLANT, ALBERT SCHROEBEKE, et al., co-libellants,
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &c.

This cause having been heard on exceptions taken by the claimant in the above action, and submitted by the advocates for the respective parties, and due deliberation being had in the premises, it is ordered, adjudged, and decreed by the court that the first and second of said exceptions be allowed, and that the third of said exceptions be disallowed, and that, in accordance therewith, the said report be confirmed, and that, under the principles of the decision of the court, the libellants in this action recover against The Bark Elwine Kreplin, her tackle, apparel, &c., the amount of the wages due them by reason of the facts in the libel herein set forth, with interest thereon up to the date of said report, amounting to the sum of seven hundred and four dollars and eighty-one cents, with interest thereon from the 18th day of February, 1871, the date of said report, to date of this decree, at the rate of six per cent. per annum, amounting to the sum of seven dollars and fifty-one cents, together amounting to the sum of seven hundred and twelve dollars and thirty-two cents, and their costs to be taxed, and which costs have been taxed at the sum of two hundred and fifty-five dollars and eighty-one cents, and that said Bark Elwine Kreplin, her tackle, &c., be condemned therefor. And it is further or-
203 dered that, in pursuance of the act of Congress passed March 3rd, 1847, a summary judgment be, and the same is hereby, entered against Johannes Nicolas Rodbertus, the principal, and Harry Bolland, and J. W. Engelke, the sureties on their bond, given on the discharge of the property arrested for the sum of two thousand dollars, the amount of their said bond executed on d'scharging the said bark from custody. And it is further ordered that, unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, the libellants have execution to enforce satisfaction of this decree.

CHAS. L. BENEDICT.

(Indorsements:)

Mess. SALOMON & BURKE.

GENTS: Please notice that the within will be presented for settlement to his hon. Judge Benedict, at the U. S. court-house, in the city of Brooklyn, on the 2nd day of April, 1871, at 10½ a. m.

Dated April 19, 1871.

Yours, &c.,

D. & T. MCMAHON,
Proct. for Libellants.

Messrs. Salomon & Burke, proctors for claimants, consent to the ntry of the within decree. April 24, 1871.

U. S. district court for the eastern district of New York. In
204 admiralty. Max. Newman, et al., libellants, vs. The Bark Elwine Kreplin, her tackle, &c. Final decree confirming com. report & summary judgment. D. & T. McMahon, proctors for libellant.

Due service of a copy of the within final decree is hereby admitted. Dated the 19 day of April, 1871.

SALOMON & BURKE,
Proctors for Claimants.

Filed April 24th, 1871.

District court of the United States for the eastern district of New York.

MAX NEWMAN, LIBELLANT, ALBERT SCHROEbeke, co-libellants,
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &c., Henry Fisher, master, claimant.

SIR: The claimant, Henry Fisher, intends to appeal from the final decree of the court in this cause.

Dated April 27th, 1871.

SALOMON & BURKE,
Proctors for Claimant.

To SAMUEL T. JONES,
Clerk of said Court.

To Messrs. D. & T. MCMAHON,
Proct's for Libellants.

205 GENTLEMEN: Please take notice that the foregoing notice of appeal has been this day filed in the clerk's office in the above-entitled suit, and the claimant intends to appeal, as therein stated.

April 27th, 1871.

SALOMON & BURKE,
Proctors for Claimant.

(Indorsed:) U. S. district court, eastern district of New York. Max Newman, libellant, vs. The Bark Elwine Kreplin. Notice of appeal. Salomon & Burke, proct's for claim'ts. No. 4 Wall st., N. Y.

Service of within notice on us is hereby admitted this 27th April, 1871.

D. & T. MCMAHON,
Proct's for Lib't.

206 Circuit court of the United States for the eastern district of New York.

HENRY FISHER, MASTER AND CLAIMANT OF the bark Elwine Kreplin, appellant,
vs.
MAX. NEWMAN, LIBELLANT, AND ALBERT Schroebeke and others, co-libellants, appellees.

To the honorable the circuit court of the United States for the eastern district of New York:

The appeal of the above-named appellant respectfully shows that, on

or about the 24th day of August, A. D. 1870, the above-named libellant, Max. Newman, exhibited his libel in the district court of the United States for the eastern district of New York, against the Prussian bark Elwine Kreplin, of which the said appellant was master, and against her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of substraction of wages, civil and maritime, stating, amongst other things, that there was due to him, for wages, as mate of said vessel, and as assignee of the wages of Abraham Martens, as carpenter, and of Julius Kreuse, Herman Luett, Charles Rieckhoff, Albert Schroebeke, William Speitz, and Robert Tarrect, as seamen, employed on said vessel, in the aggregate, the sum of one thousand one hundred and fifty-eight Prussian s*l*ver dollars, and praying, amongst other things, and for the reasons in said libel stated, the said district court would be pleased to pronounce for the
207 wages, aforesaid, and also to condemn the said vessel, her tackle, apparel, and furniture, and the parties intervening therefor in costs.

That process of attachment having thereupon issued out of said district court, and said bark Elwine Kreplin, her tackle, apparel, and furniture having been attached by the marshal of said district, by virtue of such process, this appellant, as master of said vessel, thereupon duly appeared as claimant thereof, put in his claim, gave the necessary security for the release of said vessel, her tackle, &c., from said custody, and duly filed his answer to the said libel in said district court, praying that, for the facts and reasons in said answer stated, said district court would be pleased to pronounce against the said libel, and condemn the said libellant in costs, as, by reference to said libel and said claim and answer, will more fully appear.

That the said cause came on to be heard before the Honorable Charles L. Benedict, judge of said district court, on or about the 30th day of October, and the 9th, 10th, 11th, and 19th of November, A. D. 1870, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, did, on or about the 21st day of December, 1870, deliver his opinion in said cause to the effect that the said libellant recover for the amount of wages due him from said vessel; that the said other seamen of said vessel recover the wages due them from said vessel, on condition that the assignment made by them to the said libellant should be cancelled, and that they should file their petitions to be made co-libellants:

That afterwards such proceedings were had in said cause that, on the 10th day of January, 1871, an order was made therein by said judge, whereby said Albert Schroebeke, Herman Luett, Abraham Martens, Willliam Speitz, Robert Tarrect, Charles Reickhoff, and Julius
208 Kreuse were made co-libellants with the said Max Newman in said cause.

That afterwards, on or about the 18th day of January, 1871, a further order or decree was made in said cause by said judge, that the said libellant and the said co-libellants recover in said action against said bark Elwine Kreplin, her tackle, &c., the amount of wages due them respectively from said bark, for the voyage and services set forth in the libel in said action, with their costs to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such wages, and report thereon to said court with all convenient speed.

That, on or about the 23d day of February, 1871, the comm'ssioner to

whom said matter was referred filed his report, dated February 18th, 1871, wherein he reported, amongst other things, that there was due to said libellant and co-libellants the following sums respectively for their wages and interest, to wit:

To the libellant Newman	$150 28
To the libellant Martens	147 28
To the libellant Kreuse	82 13
To the libellant Reickhoff	93 86
To the libellant Luett	103 94
To the libellant Speitz	36 60
To the libellant Tarrèct	56 81
To the libellant Schroebeke	72 91

Whereupon this appellant made and filed his certain three exceptions, one to the amount allowed to said libellant Max. Newman, and two to the amount allowed to the libellant Abraham Martens, claiming that, under the decision and decree of said judge, said commissioner should have allowed to said Newman a certain sum less than the amount reported, and should have allowed to said Abraham Martens the sum of $108 28-100 instead of $147 28-100.

209 That afterwards, on the 24th day of April, 1871, the said judge made a final decree or reference in said cause, whereby, amongst other things, it was ordered, adjudged, and decreed that the said two exceptions concerning the amount reported as due to said Abraham Martens, in said report, be allowed, and that the said third exception concerning the amount reported due to Max. Newman be disallowed, and that, in accordance therewith, the said report be confirmed; that the libellant in said action recover against the bark Elwine Kreplin, her tackle, apparel, &c., the amount of wages due, by reason of the facts in said libel set forth, with interest thereon, up to the date of said report, amounting to the sum of seven hundred and four dollars and eighty-one cents, with interest thereon from the 18th day of February, 1871, the date of said report, to date of said decree, at the rate of six per cent. per annum, amounting to the sum of seven dollars and fifty-one cents, together amounting to the sum of seven hundred and twelve dollars and thirty-two cents, and their costs, which were taxed at the sum of two hundred and fifty-five dollars and eighty-one cents, and that said bark Elwine Kreplin, her tackle, &c., be condemned therefor, and that, in pursuance to the act of Congress, passed March 3d, 1847, a summary judgment be and was, by said decree, entered against John Nicolas Robertus, the principal, and Henry Ballard and J. W. Engelke, sureties, on their bond, given on the discharge of the property arrested, for the sum of two thousand dollars, the amount of their said bond, executed on discharging said bark from custody, and that, unless an appeal be taken to said decree within the time limited and prescribed by the rules of said court, said libellants have execution to enforce satisfaction of said decree, as by reference to said decree will more full appear.

And this appellant is advised and insists that said decisions, orders, and decrees are erroneous, inasmuch as the said libellant and
210 co-libellants are not entitled to any wages in the premises, and the said district court should not have entertained jurisdiction of said cause, but should have dismissed said libel.

And this appellant, for this and other reasons, appeals from the whole of said final decree, in favor of said libellant and co-libellants, to the next circuit court to be held in said district, and on the said appeals he intends only to have said cause heard anew on the same pleadings and the same proofs; but upon the same proof a new decision of the facts is

sought, and he prays that the said decree, and every part thereof, may be reversed, with costs, or such other decrees thereupon made as to the said circuit court shall seem just, and that said appellees be condemned to pay to this appellant his costs and damages in the premises.

SALOMON & BURKE,
Proctors for Appellant.
EDWARD SALOMON,
Advocate.

EASTERN DISTRICT OF NEW YORK, *ss:*

Charles A. Benkison, being duly sworn, says that he is a clerk in the office of Salomon & Burke, in New York City, and that, on the 8th day of May, 1871, he served a copy of the within "appeal" upon Messrs. D. & T. McMahon, libellants' proctors, at their office, at No. 11 Chambers street, in the city of New York, by delivering said copy to a member of said firm.

CHARLES A. BENKISON.

Subscribed and sworn to before me this 8th day of May, 1871.
TH. HARRISON,
Notary Public, Kings Co.

211 (Indorsed:) U. S. circuit court for the eastern district of New York. Henry Fisher, claimant of the bark Elwine Kreplin, appellant, vs. Max. Newman, libellant, and Albert Schroebeke and others, co-libellants, appellees. Appeal. Salomon & Burke, appellants' proctors, No. 4 Wall st., New York City. Filed May 8th, 1871.

United States district court, eastern district of New York.

MAX. NEWMAN
vs.
THE BARK ELWINE KREPLIN, &C.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Louis Tetens, being duly sworn, says that he resides in the city of Brooklyn, at No. 364 Clinton street; that he is worth, at least, the sum of five thousand dollars, over and above all his debts and liabilities, and that his property consists of cash in hand, bills receivable, which are good, outstanding accounts due him, &c.; that he is not liable or
212 surety on any promissory notes or other bonds, and has given the figures $5,500, not as the extent of his means, but because it answers the requirements of this obligation which he has entered into in this case.

LOUIS TETENS.

Sworn to before me this 4th day of May, 1871.
JOSEPH GUTMAN, JR.,
U. S. Commissioner.

United States circuit court, eastern district of New York.

MAX. NEWMAN, LIBELLANT, ALBERT SCHROEBEKE, et al., co-libellants,
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &C., and Henry Fisher, claimant.

ADOLBERT WENDT, being duly sworn, saith:

I reside at 1453 Pacific street, Brooklyn; I own real estate in Brooklyn—No. 1453, Pacific street; that property is worth between 40 and 50 thousand dollars; I was offered $40,000 for it last week; I have only one mortgage on it for $10,000; I am surety on no bond that I know of except one for $500. I own other real estate, and valued at $50,000, encumbered to the extent of $5,000. There are no other liens or in-
213 cumbrances on that property except those above mentioned. There are no judgments against me. I am indorser on no notes. I am a citizen of the United States. My business is that of ship-broker.

A. WENDT.

Sworn to before me this 22d day of May, 1871.

T. W. HANDLEY,
Notary Public, N. Y.

Bond for costs.

Circuit court of the United States of America for the eastern district of New York, in the second circuit.

MAX. NEWMAN, LIBELLANT, ALBERT SCHROEbeke, et al., co-libellants,
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &C., Henry Fisher, claimant.

Know all men by these presents that we, Henry Fisher, claimant, and Adolbert Wendt and Louis Tetens are held and firmly bound unto the above-named libellants and co-libellants in the sum of two thousand dollars, to be paid to the said libellant and co-libellants, for the payment of which, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the second day of May, in the year of our Lord one thousand eight hundred and seventy-one.

214 Whereas the above-named Henry Fisher, claimant, has prosecuted an appeal to the circuit court of the United States for the eastern district of New York to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Henry Fisher shall prosecute his said appeal to affect and answer all damages and costs, if he should fail to make his said appeal good, then his obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY FISHER. [L. S.]
A. WENDT. [L. S.]
LOUIS TETENS. [L. S.]

Sealed and delivered, and taken and acknowledged this 2d day of May, 1871, before me, as to Henry Fisher and A. Wendt.

JOHN A. SHIELDS,
U. S. Commissioner.

Sealed and delivered, and the oath acknowledged 1871, as to Louis Tetens.

JOSEPH
U. S. C

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Adolbert Wendt and Louis Tetens, being duly sworn, depose and say, each for himself, that he is a resident of the east district of New York, and that he is worth the sum of four thousand dollars, over and above his just debts and liabilities.

A. WENDT.
LOUIS TETENS.

215 Sworn to, this 2d day of May, A. D. 1871, before me, as to Adolbert Wendt.

JOHN A. SHIELDS,
U. S. Commissioner.

Sworn to, this 4th day of May, A. D. 1871, by the said Louis Tetens, before me.

JOSEPH GUTMAN,
U. S. Commissioner, S. D. of New York.

(Indorsed:) U. S. circuit court. Max. Newman, libellant, Albert Schroebeke et al., co-libellants, vs. The bark Elwine Kreplin, her tackle, &c. Bonds for costs on appeal of Hen'y Fisher, claimant, from decree of the district court. Salomon & Burke, proctors for appellant. Filed this 5th day of May, 1871.

We approve of the within bond as to form and sufficiency.
N. Y., May 4th, 1871.

D. & T. McMAHON.
Proctors for Libellants.

216 *Corrections.*

Read "Schwebtke" for "Schroebeke" where it occurs.
" "Torreck" " "Tarrect," " " "

217 (Indorsed:) Received copy of the within petition and notice of motion, 20 March, 1872.

SALOMON & BURKE,
Proctors for Bark "E. Kreplin," &c., & Owners.

SAMUEL J. JONES, *Clerk.*

Supreme Court of the United States. In the matter of the application of Max. Newman & others for a writ of mandamus. Petition. Notice of motion. D. & T. McMahon, proctors for petitioners.

(Indorsement on cover:) Original action, No. 12. Ex parte: In the matter of Max. Newman, A. Martens, J. Kruse, H. Luett, C. Rieckhoff, A. Schroebeke, W'm Speitz, & Rob't Tarrect, petitioners. Petition for writ of mandamus to Lewis B. Woodruff, circuit judge U. S., eastern dist. of New York. Filed 5th April, 1872.

ADOLBERT WENDT, being duly sworn, saith:

I reside at 1453 Pacific street, Brooklyn; I own real estate in Brooklyn—No. 1453, Pacific street; that property is worth between 40 and 50 thousand dollars; I was offered $40,000 for it last week; I have only one mortgage on it for $10,000; I am surety on no bond that I know of except one for $500. I own other real estate, and valued at $50,000, encumbered to the extent of $5,000. There are no other liens or in-
213 cumbrances on that property except those above mentioned. There are no judgments against me. I am indorser on no notes. I am a citizen of the United States. My business is that of ship-broker.

A. WENDT.

Sworn to before me this 22d day of May, 1871.

T. W. HANDLEY,
Notary Public, N. Y.

Bond for costs.

Circuit court of the United States of America for the eastern district of New York, in the second circuit.

MAX. NEWMAN, LIBELLANT, ALBERT SCHROEBEKE, et al., co-libellants,
vs.
THE BARK ELWINE KREPLIN, HER TACKLE, &C., Henry Fisher, claimant.

Know all men by these presents that we, Henry Fisher, claimant, and Adolbert Wendt and Louis Tetens are held and firmly bound unto the above-named libellants and co-libellants in the sum of two thousand dollars, to be paid to the said libellant and co-libellants, for the payment of which, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the second day of May, in the year of our Lord one thousand eight hundred and seventy-one.

214 Whereas the above-named Henry Fisher, claimant, has prosecuted an appeal to the circuit court of the United States for the eastern district of New York to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Henry Fisher shall prosecute his said appeal to affect and answer all damages and costs, if he should fail to make his said appeal good, then his obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY FISHER. [L. S.]
A. WENDT. [L. S.]
LOUIS TETENS. [L. S.]

Sealed and delivered, and taken and acknowledged this 2d day of May, 1871, before me, as to Henry Fisher and A. Wendt.

JOHN A. SHIELDS,
U. S. Commissioner.

Sealed and delivered, and the oath acknowledged this 4th day of May, 1871, as to Louis Tetens.

JOSEPH GUTMAN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Adolbert Wendt and Louis Tetens, being duly sworn, depose and say, each for himself, that he is a resident of the east district of New York, and that he is worth the sum of four thousand dollars, over and above his just debts and liabilities.

A. WENDT.
LOUIS TETENS.

215 Sworn to, this 2d day of May, A. D. 1871, before me, as to Adolbert Wendt.

JOHN A. SHIELDS,
U. S. Commissioner.

Sworn to, this 4th day of May, A. D. 1871, by the said Louis Tetens, before me.

JOSEPH GUTMAN,
U. S. Commissioner, S. D. of New York.

(Indorsed:) U. S. circuit court. Max. Newman, libellant, Albert Schroebeke et al., co-libellants, vs. The bark Elwine Kreplin, her tackle, &c. Bonds for costs on appeal of Hen'y Fisher, claimant, from decree of the district court. Salomon & Burke, proctors for appellant. Filed this 5th day of May, 1871.

We approve of the within bond as to form and sufficiency.
N. Y., May 4th, 1871.

D. & T. McMAHON.
Proctors for Libellants.

216 *Corrections.*

Read "Schwebtke" for "Schroebeke" where it occurs.
" "Torreck" " "Tarrect," " " "

217 (Indorsed:) Received copy of the within petition and notice of motion, 20 March, 1872.

SALOMON & BURKE,
Proctors for Bark "E. Kreplin," &c., & Owners.

SAMUEL J. JONES, *Clerk.*

Supreme Court of the United States. In the matter of the application of Max. Newman & others for a writ of mandamus. Petition. Notice of motion. D. & T. McMahon, proctors for petitioners.

(Indorsement on cover:) Original action, No. 12. Ex parte: In the matter of Max. Newman, A. Martens, J. Kruse, H. Luett, C. Rieckhoff, A. Schroebeke, W'm Speitz, & Rob't Tarrect, petitioners. Petition for writ of mandamus to Lewis B. Woodruff, circuit judge U. S., eastern dist. of New York. Filed 5th April, 1872.

U. S. Supreme Court.

In the Matter of the Application of

Max Newman, Abraham Martens, Julius Kruse, Herman Lutte, Charles Rieckhofe, Albert Schwebke, William Speitz, and Robert Torrect, for a Writ of Mandamus out of the Supreme Court to Hon. Lewis B. Woodruff, Circuit Judge, holding the United States Circuit Court, in the Eastern District of New York, in the Second Circuit.

Points of Counsel for Petitioners for the Writ.

This case comes before this Court on a petition filed by the above named petitioners by their attorney and counsel, Dennis McMahon, for a writ of mandamus to be issued out of and under the seal of this Court, and to be directed to the Honorable Lewis B. Woodruff, the Circuit Judge, holding the Circuit Court in and for the Eastern District of New York, in the second Circuit, commanding him to entertain jurisdiction of a certain cause then pending in said Court, and to decide the same on the merits thereof. On the petition filed and the papers accompanying the same, on motion of Mr. Phillips for D. McMahon, this Court granted a rule to show cause on the 19th day of April, 1872, why a writ of per-

emptory mandamus should not be granted. *The hearing of the application is now on that rule.*

The facts of the case are as follows, viz:

About the 24th day of August, 1870, the above-named petitioner, Max Newman, in his own behalf, and as assignee of the other petitioners, by D. & T. McMahon, their Proctors, filed in the District Court of the United States, held in and for the Eastern District of New York, in the Admiralty, their libel against the Prussian bark "Elwine Kreplin," her tackle, &c., claiming to recover the amount due the above-named parties, who were Prussian subjects, for their wages as mariners on board of said vessel, and praying, amongst other things, and for the reasons in said libel stated, that the said District Court would be pleased to pronounce for their said wages, and also to condemn the said vessel, her tackle, &c., and the parties intervening therein for the said demand, and for costs.

That process of attachment was therefor issued out of said District Court, and the said bark, her tackle, &c., then in said District, were attached by the Marshal in said District under such process.

That thereupon Henry Fisher, master and part owner of the said bark, appeared in said Court, put in his claim, and gave the necessary security for the release of said vessel and her tackle, &c., and filed his answer, setting up, among other things, a want of jurisdiction in said Court, and praying that, for the facts and reasons in said answer stated, said District Court would be pleased to pronounce against said libel, and condemn the libellants in costs.

The said cause came on to be heard before the Hon. Charles L. Benedict, Judge of said District Court, upon pleadings and proofs, and the said Judge having advised thereon, did, on or about the 21st of December, 1870, decide, That the said Max Neuman recover the amount of wages due him from said vessel, and that the said other seamen above

named recover their wages from the said vessel on performing the conditions stated in said decision.

That afterwards such proceedings were had in the said cause, that, on the 10th day of January, 1871, an order was made therein by said Judge, whereby the said Albert Schwebke, Herman Luett, Abraham Martens, William Speitz, Robert Tarrect, Charles Reickhoff, and Julius Kruse were made co-libellants with said Max Newman in the said cause.

Afterwards, on the 24th day of April, 1872, the said District Judge made a final decree in said cause, whereby it was adjudged and decreed that the said several parties, libellant and co-libellants, recover in said cause the sum of $712.32, their wages and their costs, which were taxed at $255.81. Upon which decree a summary judgment was afterwards entered against the principles and sureties on the bond given on the discharge of the above vessel.

Subsequently an appeal was taken from the said final decree on or about the 27th day of April, 1871, to the Circuit Court of the United States, held in and for the said District, and such appeal was duly perfected on or about the 8th day of May, 1871, and such proceedings were had in the Appellate Court as that the cause was fully argued on the same pleadings and proofs held before his Honor Lewis B. Woodruff, Circuit Judge of the Second Circuit, and after advisement, the said Circuit Judge, on or about the day of February, 1872, delivered his opinion, adjudging that the said libel should be dismissed for want of jurisdiction in the said District Court of the United States or in any Court of the United States to entertain jurisdiction thereof, and thereupon delivered an opinion (a copy of which appears in the papers on this motion); and for that reason refused and declined to entertain said cause and to consider the same on the merits, but dismissed the same for want of jurisdiction.

No final decree has been signed by the said Circuit Judge or entered in the said Circuit Court on the said appeal.

The grounds of the refusal of the said Circuit Court to entertain jurisdiction of the said cause, and of its decision to reverse the judgment of the District Court for want of jurisdiction of the latter Court to entertain, hear and decide said cause on the merits, involve very grave questions of Constitutional law.

The said Circuit Court, as will appear by their opinion, refuse to entertain jurisdiction of said cause, or to consider the same on the merits, because of Article 10 of a commercial treaty entered into between the government of the United States and the kingdom of Prussia, in the year 1828, which provides that the consuls, vice-consuls and commercial agents of the respective governments shall have the right as such to sit as Judges and Arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the tranquility of the country, or the said consuls, vice-consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect or supported, and that because of that clause that neither the District nor Circuit Courts have any jurisdiction of the said cause, the Consul-General of Prussia at New York having assumed jurisdiction of the cause. The facts of the cause, as shown on the trial in the Circuit Court from the Apostles, were as follows, viz. :

The bark "Elwin Kreplin" came into the port of New York in June, 1870, (89) and discharged her cargo at Hunter's Point, Long Island (90). While lying there the war broke out between Prussia and France (90). The Captain and a part owner of the bark, named Fisher, concluded it best to lay up in this port to await the termination of hostilities (90). He had aboard of his vessel, as crew, the petitioners, of whom Max Neuman was his mate; Abraham

Martens was carpenter, and the others were ordinary seamen.

As soon as the news of the war was announced, Luett, Riekhoff and Kruse went to the master and said they were willing to go to the consul to be discharged to go home to the army (93). The Captain expressed his willingness, as soon as he was certain that the ship was to be laid up, to let them go (94).

The bark lay at Hunter's Point ten days, and then went to Stapleton, Staten Island, and there laid up (90).

On the 1st of August, 1870, while the bark lay at Stapleton, the Captain punished Schwebke, one of the crew (a mere boy) (164) for a very trivial thing (see Captain's complaint in the Apostles). He beat him so hard (90) that the boy made a great noise in the cabin and excited the sympathies of the men to such a degree that they hove down their tools with which they were washing the decks (90) and went to the cabin. The carpenter, Martens, asked the Captain why he struck the boy so, and told him to let the boy go, which he did (90). The crew then returned to the deck and recommenced washing them. Thereupon the master came out and commenced a conversation with the mate, in which he charged the latter with forming a plot with the men (90). Some angry words passed; the men then spoke up to the Captain—they were going to the Consul on account of bad provisions (90). Two of them, Luett and Rieckhoff, reminded the Captain that he had promised to let them go home as soon as the ship was laid up, and they wanted to see the Consul about that. (90) All complained about the bad provisions (90) and wanted to see the Consul about it, especially the carpenter. The Captain said Leutt and Martens might go (91). The men said they would all go together. The master said nothing, but turned around, and swearing, went into the cabin (91). After breakfast all hands except the mate and cabin boy left the bark (91) and went on shore for the purpose of seeing the Consul, one or

more of them in addition to make a complaint against the master for beating the boy, before a Police Justice down there named Garrett (101).

The Captain, who had also left the bark, returned and commenced a dispute with the mate, charging him with inciting the carpenter to get a policeman to arrest the master (91). This the mate indignantly denied, and, getting in a passion, said to the master, "*I would go to the Consul's too, if he carried on with more like this*," to which the master replied, "For my part, you can go" (91). The mate, thereupon, put on his coat, left the vessel, and walked down to the Ferry House, and was quietly sitting there, awaiting the boat (91), in order to go up to the Consul's office at New York, when two men came down to him and told him he was wanted up at the Police Station, before Justice Garrett. To this he demurred, saying he was going to see the Consul, whereupon he was told that he would only be detained ten minutes (91). Accordingly he went up there and met the whole crew (91), who had been trying to get out a warrant against the master for beating the boy (101). The Police Justice said he could do nothing. The Captain said he wanted all hands arrested for mutiny (91). The crew then said they only wanted to see the Consul. The Justice said he could do nothing farther, and ordered them back into custody at the Police Station (91). Thereupon, all hands were locked up on the Captain's complaint, for desertion ( ), and the officer detained them until next day (91). In the meantime, the master lodged a complaint with the Consul of the North German Confederation (see complaint, fol 164). *In this complaint the master says he had the men in custody under Justice Garrett* (164).

The next day the master brought down to the Justice a requisition of the Consul (see same) 143 The Police Justice committed them to jail as deserters (see commitment). *The requisition of the Consul was addressed to any marshal or magistrate of the United States, and required them to take cognizance of the offense named, which was desertion.* (111) (143)

The men were all kept in jail for eleven or twelve days. On the 11th August the police took out four men. On the 12th August the balance were taken out and brought on board ship and were told that they might go anywhere they liked. The Captain was there and gave Newman permission to go to the Consul if he liked.

The Consul refused to hear the men or the case; said he had no time to attend it, and told the men the Captain would pay them off. But the Captain did not do it. The Consul *did not bring the crew face to face with the Captain.* (108)

No witnesses were examined when the parties were present—no adjudication was made in writing. The Consul-General was never brought in communication with the men or with the master—the business was all done with the Vice-Consul, Zach. (107-108)

No examination of the case of the men, either on the charges of mutiny or desertion, was had before Justice Garrett or before the Consul-General or Vice-Consul, but the men were committed and locked up in a loathsome jail, in the centre of Richmond County for eleven days of the hottest August (1870) *which has happened in this country for many years.* (92-111)

The mate loudly complained to the Consul of the injustice that had been done to him, and said, "*if that was the sort of justice he administered for sailors he would rather go to jail.*" (92) The Consul ordered the police to let the men go—he would have nothing more to do with the men. (92)

The Captain, after wavering some time, finally concluded he would not pay the men who were left *in such a state of destitution as to be unable absolutely to pay their ferriage over to the vessel.* (92-102)

They severally assigned their claims for wages to Max Newman, the libellant, who filed his libel for his own and their several claims assigned to him. Issues were joined on this libel, and the cause was tried before the Hon. C. L. Benedict, District Judge

of the Eastern District, who decided in favor of the libellant for his own demand, but ordered the other men to be brought in as co-libellants—Newman to cancel his assignment. This was done. (See stipulation and cancellation) 170 The crew filed their petition to be made co-libellants (see same) 172-181 and the Court so ordered. (182)

The Court decreed in their favor, as before stated, from which appeal was taken.

POINTS.

I. If the doctrine laid down by the learned Judge in the Circuit, in the opinion he gave reversing the decision of the District Court of the Eastern District of New York, be the correct one; the consequences, so far as the jurisdiction of the Courts of the United States, in cases of this nature will be very serious; for, as appears by the petition, (see folios to) the following Governments have treaties with the United States containing similar or analagous clauses to that of the one with Prussia now in question, viz.:

With Portugal, of 1840, Article 10, 8 Stat. at Large, p. 364.

With Hanover, of 1840, Article 6, 8 Stat. at Large, p. 556.

With Greece, of 1837, Article 12, 8 Stat. at Large, p. 504.

With Russia, of 1832, Article 8, 8 Stat. at Large.

With Sweden, of 1827, Article 13, 8 Stat. at Large, p. 352.

With Austria, of 1848, Article 4, 9 Stat. at Large, p. 154.

With Hanover, of 1846, 9 Stat. at Large, p. 60-61.

With Mecklenberg Schwerin, of 1846, 9 Stat. at Large, p. 73.

With the two Sicilies, of 1855, 11 Stat. at Large, p. 650.

With France, of 1853, Article 8, 10 Stat. at Large, p. 996.

With Venezuela, of 1860, Article 26, 12 Stat. at Large, 157.

With Dominican Republic, of 1867, Article 26, 15 Stat. at Large, 181.

With Kingdom of Italy, of 1868, Article 11, 15 Stat. at Large, 189.

Under the above construction, it will follow that much of Admiralty and Maratime jurisdiction of the Courts of the United States will be taken away from them because of the provisions of the said treaties.

II. But the doctrine announced by the learned Circuit Judge and his refusal to entertain jurisdiction, excepting to dismiss, we submit to be untenable, and that it should be overruled for these reasons viz:

Firstly.—That the said Treaty stipulations (Article 10) are unconstitutional and void, because that they strip the Courts of the United States of the Admirality jurisdiction conferred on them by the Constitution of the United States.

The Constitution of the United States expressly provides that the Judicial power of the United States Courts extends to all cases of Admiralty and Maritime jurisdiction. (Art. III, § 2; sec. 1.). It was well settled at the time of the formation of said Constitution, and has been since, that Admiralty Courts have jurisdiction, *at their discretion*, over foreign vessels

within their jurisdiction, and actions in Rem against them bought by foreign seamen. If, then, the Treaty making power of the United States Government attempts to confer on a foreign power, or a foreign official, exclusive jurisdiction of cases already within the purview of Admiralty, they violate the above Constitutional provision, and the said treaty provision would be so far null and void. If the Admiralty jurisdiction over suits by foreign seamen can be bartered away, by treaty, to foreign powers, thereby creating a multitude of local jurisdictions within our territory, our National Courts might, in the course of events, be stripped of an important part of its lawful jurisdiction.

Secondly.—That the said Article 10 of the said Treaty with Prussia, has no reference *to suits or proceedings in rem*, and in that respect differs decidedly from the case mentioned in the Treaty, of a dispute between the Master and Seaman.

In actions *in Rem.*, the Admiralty acquires jurisdiction from the *locus in rei sitae*; and its judgments, as in the analogous cases of a sale of a deceased's land by an Orphan Court, Gignoux, Lessee, *vs.* Astor, (2 How., 319 and 338, opinion,) or of a foreclosure of a chattel mortgage, operate on the estate or vessel alone, and not on the heirs or owners. *The proceeding is against the vessel to foreclose a lien*, and the owners are brought in incidentally. The master, *as such*, has no interest, nominal or otherwise, in the suit in question, and it is a misnomer to call the present case a controversy between a master and his crew. Justice Storey, in the Jerusalem, 2 Galln., 191, held that a proceeding in Rem. might be maintained in our Courts against property within our jurisdiction, although the parties were foreigners. The same principle was held by Doctor Lushington, in the Golubchick, 1 W. Rob., 143.

If the treaty included the case of a master who steps in to the rescue of the ship in his character of owner, it was very easy for the framers of the treaty to insert a clause to the effect that all actions against a foreign ship, brought by a foreign seaman, should be heard before the Consul alone, and so readily would such a case suggest itself to their minds, that we maintain that their omission to so provide was intentional. The case of seizure of ships for debt is expressly provided for in a previous treaty, (to wit, 1799,) with Prussia, Art. 16, 8 Stat. at Large, p. 170, where it is stipulated that all seizures of ships shall be according to due course of law usual in such cases, and it cannot be held that this express reference to actions *in rem*, against vessels, is to be impliedly repealed by any such provision as under discussion, for it is only by implication, if at all, that we can apply it to the case at issue.

It would be useless to allow the Consul to act as arbitrator or Judge in a case *in rem*, if no means are provided for carrying his judgment into effect. *Nothing of the kind is provided for a case in rem.*. The Act of March 2, 1829, 4 Stat. at Large, p. 359, gives no such power, nor does the Act of August 8, 1846, 9 Stat. at Large, p. 78, give a proces *in rem*. This last Act gives a coercive power, by imprisonment, nothing more, and our Government could not have intended to vest such a jurisdiction in foreign Consuls, inasmuch as, in that event, they have given a right without a remedy.

Thirdly.—In the case at Bar, the facts show that the said Prussian authorities refused to entertain jurisdiction of the matter in difference involved in this cause, or if they did so, they made no adjudication in the matter in difference and in controversy, between the said libellants

and the master of the said vessel, which would exclude the jurisdiction of the said District Court.

Fourthly.—That the alleged treaty and its stipulations are with the Kingdom of Prussia. The tribunals referred to in the said treaty are the Consuls, Vice Consuls and Commercial Agents of Prussia.

That at the time of the occurrence of the facts here in controversy, there were no Consuls or Vice Consuls or Commercial Agents of the kingdom of Prussia in the city of New York, or in the United States, but that there are such officials of the North German Union. Such treaty stipulations to maintain such tribunals independant of our own, in this country, are contrary to the spirit of our institutions, as its effect may be to create in our midst many tribunals independent of our National Courts. Therefore such provisions should be construed strictly. As there are now no Prussian Consuls, we maintain that the North German Union do not come within the treaty, especially as we find, among the treaties with our government, one with the North German Union, October 21, 1867, in which no provisions of the kind above referred to are contained. (15 Stat. at Large, p 87.) And also one with the King of Prussia, made February 22, 1868. (15 Stat. at Large, 115.)

Fifthly.—That as appears by the proofs in the cause, the said Consul is estopped from asserting his exclusive jurisdiction, *because that he appealed in his requisition to our Courts, and prayed them to take cognizance of the case. He cannot be permitted, after doing so, to avail himself of the benefit of said treaty stipulations.*

III. *As to the admiralty jurisdiction of Courts* of the United States over foreigners and their property in our country.

I. Benedict's Admiralty, second edition, section 282, says:

"There have been attempts in England and in this country to establish an exemption in favor of the seamen of foreign merchant ships. It has sometimes been placed on the ground of the comity of nations—sometimes on the fancied ground, that a vessel is part of the territory of the nation to which she belongs; sometimes on the ground that there can be no jurisdiction in such cases, except by the consent of the Consul or other diplomatic representative of the foreign nation to which the seaman or the vessel belongs, all of which are fallacious.

There is no such comity of nations. *Nothing within the territory of a nation is without its jurisdiction, and no officer of a foreign government can grant or destroy the jurisdiction of our Courts.*

Some exemptions are established by the Constitution, some by treaty, and some by the established and immemorial usage of nations; and they do not apply to persons and property engaged in the ordinary pursuits of commerce. In the present state of international intercourse and commerce, all persons, in the time of peace, have the right to resort to the tribunals of the nation where they may happen to be for the protection of their rights.

The jurisdiction of the Courts over them is complete except where it is extended by treaty, though sometimes, as in the case of foreign seamen, they will refuse, from considerations of expediency, to exercise their jurisdiction."

The learned author cites:

Davis *v.* Leslie, Abb. Ad. 123 and cases cited.
Willendson *v.* Forsoket, 1 Pet. Ad. R., 197.
The Infanta Abb. Ad., 263.
Bucker *v.* Kelorkgeter, id., 402.
Graham *v.* Hoskins, Olcott, 224.
The Napoleon, id., 208.

IV.—Admiralty has jurisdiction over suits between foreigners, although it is not bound to exercise same, but where the Court is satisfied that justice requires its interposition its powers will be exercised in behalf of foreigners.

The Bellona, Bee., 112.
The Forsoket, 1 Pet. Adm., 196.
The Golubchick, 1 W. Rob., 143.
2 Gall 191 The Jerusalem, Johnson *v.* Dalton, 1 Cowen, 545.

In the Courts of the United States, jurisdiction will ordinarily be exercised if the *voyage* has been *terminated* by full completion or *abandonment*, or if the *contract of hiring is dissolved by the wrongful act of the owner or master*, (Abb. U. S. Ct. Pract., Vol. 1) 355 and 356; Davis *v.* Leslie, Abb. Adm., 123; Mason *v.* Ship Blairean, 2 Cranch, p. 184, opn.) or where foreign seamen are *discharged from a foreign ship there and are necessitous.* (The Napoleon Olc. 208.) And the Court will entertain jurisdictian even though the shipping articles contain a stipulation that the seamen will not sue in any Courts but those of their own country. (Bucker *v.* Klockgeter, Abb. Adm., 402; Segaw *v.* Roberts, 3 Esp., 71; Linland *v.* Stephens, ib., 269. In the case of Bucker *v.* Kloikgeter the Court remarked: "I am clear that notwithstanding a stipulation of this sort the Courts of the United States are open to the protection of foreign seamen left destitute within their jurisdiction by improper discharge, or by the breaking up of the voyage from any other cause than the wreck of the vessel."

The entertaining of such jurisdiction is, in some cases, discretionary with the District Court in Admiralty. Having entertained same, a Circuit Court have no right to review that discretion.

The treaty with Prussia (8 Stat. at Large, p. 382) evidently contemplates *an adjudica-*

tion by the Consul on hearing both sides, not an *ex parte* tribunal of injustice, wherein a master shall exercise a tyranny unknown to the tribunals of our own country.

VI. The learned counsel for the bark Kreplin, presented as a forcible reason to the learned Circuit Judge why the District Court had not jurisdiction to entertain the cause in the face of the 10th Article of the treaty with Prussia of 1828; that "The effect of this clause in this and simi-"lar treaties evidently was to secure to each "country the exclusive right to have just such "difficulties and disputes between the captains "and crews of their vessels, as this one was ex-"amined into by its own officers or tribunals; "because foreign tribunals not familiar with "laws and regulations governing such cases "would be apt to do injustice." The learned counsel then illustrated his argument by a reference to the alleged mistakes of the District Court below in this case in reference to the Prussian law. This argument, we insist, presents one of the most powerful reasons why the Circuit Court should have entertained jurisdiction and why this Court should issue the mandamus. Is it to be allowed that the treaty making power in our government have a right to create a multitude of tribunals, who would administer in our midst their peculiar national laws in the different disputes which may arise between their own citizens, when our Constitution has created for us national tribunals fully competent to give the necessary adjudications in cases between foreigners who frequent our shores for commercial purposes.

No student of Blackstone (Vol. 1, p. 19,) can

forget the bold stand taken by the famous English Parliament of Merton (Henry 3d, chap. 9) against the administration in that country of the canon law, "Et omnes comites et barones una voce responderunt quod nolunt leges angliæ mutare, quae hujus usitatæ sunt approbatae"

A happy illustration of the advantage of the administration of Prussian law, by their local officials in our midst is shown in this case, viz.: The master of the Kreplin goes to his Consul, makes a protocol or complaint *ex parte*—the requisition is given, the warrant issued, and the men, without a hearing or without being served with the charges, or being confronted with their accusers, or even seen by the Consul, are locked up for eleven days, in the heated term of August, 1870, in a loathesome village jail, without a change of clothes or linen—all in obedience to the administration of Prussian law and justice, by one of their petty officials in our midst.

The learned District Judge below deservedly stamped such conduct as unlawful, and entitling the seamen to their discharge, yet, if the doctrine of the learned Circuit Judge obtains and is sanctioned by this Court, its ultimate may be that we shall find hereafter, perchance, the Japanese Consul ordering, in the case of disputes between his own fellow subjects. the master of the vessel, or may be the whole crew, to commit harikari—after the most approved Japanese fashion, or the Russian Consul administering the knout, the Turkish Consul the bastinado, &c., &c. Chinese law permits public executions by beheading; yet would our institutions permit the Chinese Consul to settle in San Francisco, or in any of our Pacific ports, a dispute between the master and crew of a Chinese junk, by ordering one or more of the parties to such a death, or even to any capital or other similar penalty?

The act of August 8, 1846, chapter 105, 9 Stat. at Large, p. 78, gives full power to the District

and Circuit Courts of the United States, *when applied to by the Consuls*, to carry into effect the award, arbitration, or decree of any such Consuls requiring their assistance in the premises, according to the true intent and meaning of such award, arbitration, or decree, and for that purpose to issue all proper remedial process, mesne, and finally to carry such award, &c., into effect.

If our National Courts have not jurisdiction in the case of disputes between foreign masters and seamen, *except when applied to by their Consuls*, the most intolerable acts contrary to the spirit of our institutions will prevail, and no remedy will exist save at the pleasure of the foreign official.

Take this case. The Master finally left these men destitute on our shores. His Consul upholds him in it. Are our alms houses to be filled with such seamen without a recourse in the proper cases to the National Courts having jurisdiction in that class of actions to recover their lawful dues, and to enforce their lawful maritime liens on the foreign ships in our ports. We submit that there is not a doubt about it, and that the doctrine of the learned Circuit Judge is without authority or precedent to support it. In fact he cites nothing but the 10th Article of the Treaty with Prussia.

VII.—We submit, therefore, that the learned Circuit Judges erred in refusing to entertain jurisdiction, *and the amount in controversy not being* $2,000, *no appeal lies to this Court from the Circuit Court, and there being no other specific or legal remedy, the only remedy the petitioners have in the premises is by mandamus*, to compel

the Circuit Judge to entertain jurisdiction of the cause and to proceed to judgment.

The definition of the writ of mandamus shows that it is issued to inferior Courts "to enforce "the due exercise of those judicial or ministe- "rial powers, with which the Constitution or "Congress have invested them; and this not "only by restraining *their excesses*, but also "by quickening their negligence and obviating "their denial of justice."

Ex parte Bradley, 7 Wallace's Rep., 364, opn. 375.
Ex parte Crane, 5 Peters, p. 190.
Stafford *v.* The Union Bank, 17 How., 275.

While this Court will not restrain nor direct by mandamus in what manner the *discretion* of the inferior tribunal should be exercised, *it will, in proper cases, require the Court to hear and decide.*

Life and Fire Ins. Co. *v.* Heirs, Wilson, 8 Peters, 291.
Ex parte Bradstreet, 7 Peter's R, 634.

VIII.—The 13th Section of the Judiciary Act gives ample power to this Court to issue writs of mandamus in cases warranted by the principles and usages of law, to *any Courts appointed or persons holding office* under the authority of the United States.

See 1st Stat. at Large, p. 80.

The principles and usages of law, give the right to a mandamus *where a party has a legal right, and no other remedy to enforce it.*

Phillips Pract. p. 230.

IX.—In the case at Bar the proposed mandamus

does not usurp the functions of a writ of error or appeal.

(*a*) No appeal lies in this case, because the amount is less than $2,000.

(*b*) The Circuit Judge refuses to consider and determine, on the merits, a cause over which he has ample jurisdiction, he entertaining the opinion that the Courts of the United States, sitting as Courts of Admiralty and Maritime jurisdiction, have not jurisdiction of the subject matter, because of the Treaty with Prussia.

In this Court it is submitted that the conclusion of the Circuit Court is erroneous. *Being erroneous, his refusal to act judicially on the plea that he has not jurisdiction, brings him within the operation of the law of mandamus.*

Otherwise the most grave results might follow. In the great majority of Admiralty causes of action, the subject matter in controversy is far less than $2,000. No appeal lies to this Court, unless the subject matter involve that sum. A Circuit Judge entertaining very strict notions of the extent of Admiralty jurisdiction, might, in a contest between State and National Courts, paralyse the commerce of a great commercial emporium like New York. Can there be no correction for this? *Is a party to be dismissed in a case like this, with the allegation that the writ of mandamus cannot usurp the function of a writ of error, therefore there is no correction?*

While it is conceded that the writ of mandamus *cannot be used to correct an erroneous judgment* of a Court of acknowledged jurisdiction, yet it can be invoked *to compel a Court to exercise its jurisdiction*, even though such Court be of the opinion it had not jurisdiction. The distinction between the two classes of cases is obvious.

See Ins. Co., vs. Adams, 9 Peters, 571.
See *Ex parte* Story, 12 Peters, 339.
See *Ex parte* Hoyt, 13 Peters, 279

X. The distinction lies between a direction to an inferior tribunal *to act*, and direction to it *how to act*. We do not seek to control Judge Woodruff's judgment by the mandamus we apply for. We seek to *compel him to entertain jurisdiction* of the cause and then to *hear and decide* according to the law and the allegations and proofs.

The following cases are clear on the *right of a superior tribunal to compel an inferior tribunal to hear a cause and decide it even after the latter has declined to entertain the cause because of an alleged want of jurisdiction.*

Rex *v.* Justices of Kent, 14 East, 395.
Hull *v.* Supervisors of Oneida, 19 Johns., 260.
Judges of Oneida County *v.* The People, 18 Wend., 92 and 95.
v. Inhabitants of Alloway Creek, 5 Halstead, 58.

It may be contended, however, that the learned Circuit Judge has acted in this cause because *he sat as an Appellate Court*, and *on such hearing* has adjudged that the District Court had no jurisdiction, and that *such decision was the exercise of its undoubted right of affirmance and reversal—therefore a hearing.*

A moment's consideration of the position of the cause when removed into the Circuit will dispose of this objection, for the *hearing* of the cause in the *Circuit* is *a new trial* of the cause on which either side have the right to introduce new or the same evidence. The libellant opens and closes. Either party may notice the cause for trial. (Benedict's Adm. Pract., sec. 594, 2d ed.) The decision of the appeal is not fettered by any of the rules which apply to the considerations of exceptions in Courts of Error. It is emphatically *a re-trial of a cause*, in a new tribunal, it is true. The pleadings and proofs are removed to the Circuit. The stipulations, also, are sent there. If any property or money

is in custody at the time of the appeal it is transferred to the custody of the Circuit Court to its registry, and the decree in the cause is to be executed there, so that a peremptory mandamus is as effective in that Court *if the Circuit Court erroneously refuses jurisdiction*, as it would be to the District Court under like circumstances.

Benedict's Adm'y Pract., sec. 589 (last ed).
The Collector, 6 Wheat, 194.
Montgomery *v.* Anderson, 21 How., 386.
Hayford *v.* Griffith, 3 Blatch., 34.

Lastly.—The most profound respect is entertained for Judge Woodruff's convictions, but a sense of duty compels the petitioners' counsel to bring this grave question before this elevated tribunal for final action.

We ask that the writ issue to the intent that Judge Woodruff shall proceed to hear the cause and decide on the merits. *We do not seek to control his final judgment on the merits.*

D. McMAHON,
Of Counsel for the Petitioners.

Supreme Court

OF THE UNITED STATES.

IN THE MATTER OF THE APPLICATION OF MAX NEWMAN AND OTHERS, FOR A *Mandamus*, TO BE DIRECTED TO THE HONORABLE LEWIS B. WOODRUFF, CIRCUIT JUDGE, HOLDING THE UNITED STATES CIRCUIT COURT IN THE EASTERN DISTRICT OF NEW YORK.

AFFIDAVIT &c.

SALOMON & BURKE,

Proctors for Appellants in the Circuit Court.

EDWARD SALOMON,

of Counsel.

NEW YORK:

E. S. DODGE & CO., STEAM BOOK AND JOB PRINTERS, 84 JOHN STREET.

Supreme Court

OF THE UNITED STATES.

IN THE MATTER OF THE APPLICATION OF MAX NEWMAN AND OTHERS, FOR A *Mandamus*, TO BE DIRECTED TO THE HONORABLE LEWIS B. WOODRUFF, CIRCUIT JUDGE, HOLDING THE UNITED STATES CIRCUIT COURT IN THE EASTERN DISTRICT OF NEW YORK.

AFFIDAVIT &c.

SALOMON & BURKE,

Proctors for Appellants in the Circuit Court.

EDWARD SALOMON,

of Counsel.

NEW YORK:

E. S. DODGE & CO., STEAM BOOK AND JOB PRINTERS, 84 JOHN STREET.

Supreme Court

OF THE UNITED STATES.

IN THE MATTER OF THE APPLICATION OF MAX NEWMAN AND OTHERS FOR A *Mandamus*, TO BE DIRECTED TO THE HONORABLE LEWIS B. WOODRUFF, CIRCUIT JUDGE, HOLDING THE UNITED STATES CIRCUIT COURT IN THE EASTERN DISTRICT OF NEW YORK.

AFFIDAVIT &c.,

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Edward Salomon, being duly sworn, says that he is a member of the firm of Salomon & Burke, proctors of the claimant in the case of Max Newman and others, libellants, against the Bark Elwine Kreplin &c., Henry Fisher, claimant, commenced in the District Court of the United States for the Eastern District of New York, and afterwards carried by appeal to the Circuit Court of the United States for the Eastern District of New York; that he appeared and acted as advocate for said claimant in said action in said District and Circuit Courts; that in the answer to the libel in said action, it was distinctly alleged and set up by way of defence,

At a Stated Term of the Circuit Court of the United States of America, for the Eastern District of New York, held at the United States Court Rooms in the City of Brooklyn, on the 1st day of November, in the year of our Lord one thousand eight hundred and seventy-one.

Present:

The Honorable LEWIS B. WOODRUFF,
Circuit Judge.

MAX NEWMAN *et. al.*,
Libellants and Appellees.

vs.

The Bark "ELWINE KREPLIN,"
HENRY FISHER,
Claimant and Appellant.

Cause called; Mr. McMahon appears for Libellants and Appellees. Mr. Salomon appears for Claimant and Appellant. Counsel answer ready. Hearing ordered. Denis McMahon argues for Appellees. Hearing suspended until November 2d, 1871.

November 2d, 1871. Hearing resumed. Mr. Mc Mahon continues argument. Mr. Salomon argues for Appellant. Mr. McMahon replies. Argument concluded. Decision reserved.

February 23d, 1872. Decision rendered. Libel dismissed.

Extract from the minutes.

[L. S.] SAMUEL T. JONES,
Clerk.

Supreme Court

OF THE UNITED STATES.

IN THE MATTER OF THE APPLICATION OF MAX NEWMAN AND OTHERS, FOR A *Mandamus*, TO BE DIRECTED TO THE HONORABLE LEWIS B. WOODRUFF, CIRCUIT JUDGE, HOLDING THE UNITED STATES CIRCUIT COURT IN THE EASTERN DISTRICT OF NEW YORK.

Brief in behalf of the Appellants

IN THE CIRCUIT COURT, APPEARING TO RESIST THE APPLICATION.

SALOMON & BURKE,

Proctors for Appellants in the Circuit Court.

EDWARD SALOMON,

of Counsel.

NEW YORK:

Supreme Court

OF THE UNITED STATES.

IN THE MATTER OF THE APPLICATION OF MAX NEWMAN AND OTHERS FOR A *Mandamus*, TO BE DIRECTED TO THE HONORABLE LEWIS B. WOODRUFF, CIRCUIT JUDGE, HOLDING THE UNITED STATES CIRCUIT COURT IN THE EASTERN DISTRICT OF NEW YORK.

Brief on behalf of the Appellants in the Circuit Court, appearing to resist the application.

I.

This is not a proper case for the issue of a writ of *mandamus*. It is simply an attempt to cause this Court to review the decision already rendered in the Circuit Court and to direct the Circuit Judge to change his decision, and to render a different judgment in a case which cannot be brought before this Court by appeal, because the amount in controversy is less than $2,000.

Under the Constitution the appellate jurisdiction of this Court is expressly made subject to such exceptions,

and to be exercised under such regulations as Congress shall make, and it can only be exercised in the cases and in the mode prescribed by Congress.

United States vs. *Curry*, 6 How., 106, 113.

In cases like this Congress has confined the appellate jurisdiction of this Court to such "where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars," and then it must be exercised by an appeal from the final judgment or decree.

Act of March 3, 1803, 2 Stat., 244.

No appeal therefore would lie from the final decree dismissing the libel, which Judge Woodruff in his decision has ordered to be entered, because the amount claimed by the libel is less than $2,000.

It being apparent from the applicants' own statement that this Court is precluded from exercising appellate jurisdiction in this case, we respectfully submit that it cannot interfere by *mandamus* or any other process to have a different adjudication made therein, or a different decree entered than the one which, after thorough research and judicial examination and decision of the questions involved, the Circuit Judge has ordered to be made and entered.

Mandamus cannot perform the functions of a writ of error or of an appeal. The Court will not by *mandamus* direct a judge what judgment to enter in a suit; but in a proper case will only require him to proceed to enter judgment. It will never direct in what manner the discretion of an inferior tribunal shall be exercised; but will only, in a proper case, require the inferior Court to decide. It cannot by *mandamus* control the judicial discretion or conscience of the Court below.

Ex parte Crane, 5 Pet., 190, 194.

Ex parte Bradstreet, 7 id., 634.

Life and Fire Ins. Co. of N. Y., vs. *Wilson's Heirs*, 8 id., 291, 304.
Life and Fire Ins. Co. of N. Y. vs. *Adams*, 9 id., 571.
Ex parte Hoyt, 13 id., 279, 290.
Ex parte Many, 14 How., 24.
Commissioner of Patents vs. *Whiteley*, 4 Wall, 522, 534.

If the case under consideration had been one in which ~~an appeal would lie from a final judgment, *i. e.*, if the amount in controversy had been over $2,000, and if then~~ the Circuit Judge had refused to decide the case, or to enter a decree therein, this Court might compel him by *mandamus* to decide or to enter a decree; but even then it could not by such process have commanded him how to decide it, or what decree to enter. A revision of his judicial decision can only take place by appeal.

But here the applicants do not complain that the Judge has refused to decide the case, or that he has refused to enter judgment; but they complain that his decision upon some of the questions involved therein, and which were fully argued before, and have been carefully considered and adjudged by him, is erroneous, and that consequently this Court should overrule his judgment in this case. They base their very application not upon his refusal to decide (for he has decided), but upon the alleged error of his decision, and they ask this Court to correct that supposed error by *mandamus!*

Now, we respectfully submit, in the first instance, that in this application for a *mandamus*, this Court cannot look into the opinion of the Circuit Judge for the purpose of ascertaining on what ground his decision is based with a view of revising it. The opinion is no

part of the record of the case; that record shows that the Circuit Court has entertained the appeal, heard and tried it, and upon such hearing and trial, after due consideration, has ordered that the decree of the District Court be reversed and the libel dismissed. After entertaining the appeal and hearing the case, the Circuit Court has decided the controversy upon the points presented. How can this Court then, upon an application for a *mandamus*, look into the opinion of the Judge with the view of controlling his judicial conscience in order to compel him to decide differently? *He has heard and decided. That is all this Court can, by mandamus, ask him to do!*

But if this Court will examine the case presented to the Circuit Court on appeal and the opinion or decision of the Circuit Judge thereon, it will find that this question, arising under the treaty with Prussia, has from the beginning been the most important and material question in the controvrsy. That under the treaty the Prussian Consul had exclusive jurisdiction of the matter sought to be litigated, and had exercised that jurisdiction and decided between the parties, was set up by the claimant in his answer to the libel; it was again formally brought before the District Court by the Consul's protest; large part of the testimony taken at the trial related to the action of the Consul upon that subject; the questions arising from that testimony were fully argued before the District Judge who decided adversely to the claimant upon those points of the defence; upon them mainly, the appeal was taken to the Circuit Court; they involved not only the proper construction of the treaty, but also the examination and adjudication of important facts and circumstances relating to the Consul's action in the case; they were fully argued again before the Circuit Court, and that Court, after mature

consideration, has decided upon the facts and the law upon these important and most material parts of the controversy. This is in no proper sense a case in which the Circuit Court has refused to entertain or to exercise jurisdiction. It has, in fact, in due form entertained the appeal from the decree of the District Court; the case upon that appeal has been argued by counsel and considered by the Court, and upon that consideration the Court has decided that the decree appealed from should be reversed on three grounds:

First.—That under the treaty with Prussia, the Prussian Consul had jurisdiction of the matter in difference involved in the litigation;

Second.—That that jurisdiction of the Prussian Consul was exclusive;

Third.—Upon the proofs the Court *found and decided* that the Prussian Consul *had adjudicated* the matter in difference involved in the litigation and that the libellants were bound by that adjucation.

If this Court can by *mandamus* review this decision of the Circuit Court, then it can in this manner review every case in which a suit is dismissed on the ground of a former adjudication of the subject matter between the same parties.

Again; suppose the Circuit Judge had seen proper to base his decision dismissing the libel upon another ground, upon the ground, for instance, that independently of the treaty, the District Court should have refused to entertain jurisdiction of the case out of respect for the consular protest, inasmuch as it was a controversy between foreign seamen and their captain. The libel might have been very properly dismissed on this ground.

Admiralty courts of the United States generally decline to interfere between foreigners concerning

seamen's wages, except where it is manifestly necessary to do so to prevent a failure of justice, and then only where the voyage has been broken up, or the seamen have been discharged.

Lynch vs. *Crowder*, 2 Law Rep., N. S. 355;
Thompson vs. *The Nancy*, Bee, 217;
Willendson vs. *The Forsoket*, 1 Pet. Adm., 197;
The Bee, Ware, 322;
Gongales vs. *Minor*, 2 Wallace, Jr., 348;
Davis vs. *Leslie*, 1 Abb. Adm., 123, 131, et. seq;
Bucker vs. *Klorkgeter*, Id., 402;
The Napoleon, Olcott, Adm., 208;
The Infanta, 1 Abb. Adm., 263.

In the case of *The Infanta*, the court says: "It is expected that foreign seamen, seeking to prosecute an action of this description (for wages) in the courts of this country, will procure the official sanction of the commercial or political representative of the country to which they belong."

In this case, the Consul of Prussia has not only not consented to, but has filed his official protest against this proceeding which was presented, before trial, to the court below. (*See Printed Apostles, fol.* 410.)

Now, if for this reason, in the proper exercise of his judicial discretion, the Circuit Judge, on appeal, had ordered a dismissal of the libel, can it be claimed for a moment that by *mandamus* this Court could compel him to reverse his own decision?

And we have claimed, and do claim, that upon this ground also the libel should be dismissed.

If this Court grants the *mandamus*, it must also decide this point against the claimant, and in that respect control the judicial discretion of the Circuit Judge, for *non constat* that, if the Judge had not

ordered the dismissal of the libel on account of the treaty and the exercise of the consular jurisdiction, he would not have so ordered on this ground of comity between nations.

The application in this Court is for a *mandamus* directing the Circuit Judge "*to hear the appeal of said parties taken from the decision of Charles L. Benedict, District Judge of the United States, and to decide the same on the merits of the controversy.*" We respectfully insist that the Circuit Judge has decided the appeal "*on the merits.*" What are the *merits* of the controversy? Is not this question of the jurisdiction of the Prussian Consul and his decision a part of the "merits of the controvery?" Will this Court, by *mandamus*, determine what is and what is not of "the merits of the controversy?" We submit that the question presented on the appeal, whether under the treaty, and considering the action and alleged and proved decision of the Consul, the District Court should have dismissed the libel, went to the "*merits of the controversy,*" and that the Circuit Judge has decided the appeal upon its merits.

It seems to us perfectly clear that this attempt thus to bring this case and the decision of the Circuit Judge up for review in this Court, when, by the Act of Congress an appeal is not allowed from that decision, cannot be countenanced, and that the application must be denied.

II.

But if this Court should hold that, upon this application for a *mandamus*, it can inquire into and revise the decision of the Circuit Judge, then we believe that it must come to the same conclusions, and must adopt

as correct his and our construction of the treaty of the United States with Prussia of May 1st, 1828.

The elaborate opinion of Judge Woodruff, annexed to the petition of the applicants, very fully shows the correctness of his construction and judgment; yet, in addition, we beg leave to submit the substance of the argument which we addressed and submitted to him upon the hearing of the appeal, especially since the applicants have also annexed the opinion of the District Judge which we there controverted.

We respectfully insist that under the treaty with Prussia, the District Court should not have entertained jurisdiction, but should have promptly dismissed the libel.

Treaty with Prussia, 1828, Art. X and XI, 8 Stat., p. ~~328~~ 382

See also Act of March 2d, 1829, to carry into effect Art. XI, as to arrest of deserters, 4 Stat., p. 359.

Also Act of August 8th, 1846, to carry into effect Art. X, 9 Stat., p. 78.

Norberg vs. *Hillgreu*, 5 N. Y. Legal Obs., p. 177, where, under a similar treaty with Sweden, the Court refused to entertain jurisdiction.

In the case under consideration the ship was a Prussian ship, the master and all the seamen were Prussians, the difficulty was most emphatically one "between the captain and the crew of the vessel," and the Prussian Consul, to whom they both appealed in the first instance, had exclusive jurisdiction of that difference, "*without the interference of the local authorities.*"

The questions of wrongful or rightful acts of the master or the crew, of the right to a discharge, etc., etc., in a word, all the matters sought to be litigated in this suit, belong, by that treaty, to another forum, to wit, the Consul of Prussia and the Courts of Prussia.

By looking through the different treaties of the United States with other countries, we find that this clause concerning the exclusive jurisdiction of Consuls, was first embodied in the treaty with France, in 1788; then in somewhat more concise language in two treaties with Sweden; and then in the treaty with Prussia, of 1828.

Treaty with France, 8 Stat., p. 114, Art. 12.
Treaty with Sweden, 8 Stat., p. 236, Art. 5.
Treaty with Sweden, 8 Stat., p. 352, Art. 8.
Treaty with Prussia, 8 Stat., p. 382, Art. 10.

Subsequently it has been embodied in many other treaties.

The object of this clause in these treaties evidently was to secure to each country the exclusive right to have just such difficulties and disputes between the captains and crews of their vessels, as this was, examined into by its own officers or tribunals; because foreign tribunals, not familiar with the laws and regulations governing such cases, would be apt to do injustice. The mischief sought to be guarded against by this clause, is most aptly illustrated by the very case under consideration, because, by a misconceived and narrow construction of this clause, the District Court undertook to administer the Prussian law, with which it is not familiar, but which alone can govern the merits of this case.

So, in investigating the merits of the differences which had arisen between the captain and the crew in this case, the learned Judge of the District Court expressed his doubts of the applicability of the provisions of the Prussian mercantile law contained in the "Book of Navigation," and expressly referred to in the shipping-articles, and doubted whether the contract of the seamen was for two years, while even the seamen in their libels (themselves more familiar with the terms and obligation

of their contract under Prussian laws), admit that they hired themselves for two years. Such doubts would not have been entertained by a Prussian court, familiar with its own laws and rules of construction.

Again; the District Judge held that the leaving of the seamen, without permission and against the express orders of their captain, did not amount to desertion; while the Prussian Consul, when the case was brought before him, held that it was desertion. Now, however correct the District Judge may have been in his conclusion, according to American law and American authorities, on which alone he relies, the decision of the Prussian Consul—a Prussian jurist, and familiar with the laws of his country—is entitled to more weight; and, at all events, this very difference of opinion shows why that clause was put in the treaty.

Again; the District Judge was of opinion that the master was, by implication of law, liable for the supposed wrongful imprisonment of the seamen, and that, therefore, their contract for two years, which had not yet expired, had been put an end to; and in reaching this conclusion, he again and very naturally applies the rules of American law, and not those of the Prussian law. Here also his views are in direct opposition to those of the Prussian Cousul. We are very certain, that there is no such liability on the part of the master by implication of Prussian law, and that on the contrary every Prussian court would hold, that the master could not be made liable or be responsible for the blunders of an American magistrate, (the Justice of the Peace on Staten Island,) and that the seamen were in no way absolved from the obligation of their unexpired contract by the ignorance or wrongful act of an American magistrate.

All these and many other questions arising in this

case of difference between the captain and the crew, under a contract made by Prussian subjects, and with reference solely to the Prussian laws, were entertained, discussed and decided by the District Court. We insist, as the Prussian Consul respectfully but earnestly insisted in his protest to the District Court, that under the treaty with Prussia this case with these questions should not have been entertained by that Court, but should have been left, where they rightfully belong under the treaty, to the decision of the Prussian Consul and the Prussian courts.

It was claimed by the counsel for the libellants in the District Court, and his views finally found favor with the learned Judge there, that this case did not come within the treaty, because it was a proceeding *in rem*, and not a suit against the master. The treaty gives the Consul jurisdiction "*in such differences as may arise between the captain and crews * * * without the interference of the local authorities.*" Is it possible seriously to argue, that the difficulty which arose on board this vessel on the first of August, 1870, between the captain and the crew, and which resulted in the imprisonment of the crew, and finally in their bringing this action for the recovery of their wages, is not within the meaning of this clause of the treaty? We cannot believe that this Court can seriously entertain a doubt upon the subject. Besides, the treaty does not refer to the nature of the remedy, but it prohibits the "local authorities," such as the District Court, from interfering with the jurisdiction of the Consul in such differences *by any remedy whatever*. The narrow and technical construction which the District Judge gave to this treaty, would construe and fritter away one of its most essential provisions, and is, with all due respect to that

learned judge, utterly unworthy of American jurisprudence.

Notwithstanding the solemn protest of the Prussian Consul, filed in the District Court, and brought to its attention before the trial of the case, claiming for himself exclusive jurisdiction of the matter in difference, under the treaty, and stating that in fact the matter of the complaint in the libel set forth had, before the filing of the libel, been adjudicated by him, the District Judge came to the conclusion that he ought to disregard the protest and decide the case upon the merits. And in reaching this conclusion, he undertook to review and pass upon the validity of the proceedings had before the Consul. *We respectfully submit, that upon reading the libel and answer, showing the nature of the case, the District Court on receiving the Consul's protest, should have promptly dismissed the case in obedience to the treaty.* This, it seems to us, is the only true and proper course in such cases, and is due to the spirit of loyalty and respect with which such a treaty between nations and their respective and recognized authorities should be treated. The District Judge, however, was of the opinion that, because the proceedings before the Consul were not had in such a manner and form, as we in America would expect to find in judicial or quasi-judicial proceedings, therefore he had a right, and it was his duty to consider them invalid. Even without any treaty at all, it was held in the case of *The Infanta* (1 *Abb. Adm*, 263), above quoted, that if a foreign seaman sued for wages, the Court would expect him to procure the official sanction of the commercial or political representative of his country. Here, with a treaty vesting the Consul with exclusive jurisdiction, this action was maintained against the solemn protest of the Consul! And we have the spectacle presented, that the govern-

ment of Prussia, sustaining the Consul in his claims under the treaty, has taken upon itself the Appellant's case, so far as the question of jurisdiction is concerned, and through us has asked of the Circuit Court, and now asks of this Court, the privilege under the treaty with this country, (what indeed without a treaty should have been promptly accorded upon the Consul's request by that comity which should govern the intercourse of nations,) to try by its own proper authorities and according to its course of justice, these differences concerning only its subject and which have arisen on board of a Prussian vessel while temporarily here.

It was claimed in the District Court, that, because the Consul-General, Dr. Roesing, only issued the requisition and the subsequent proceedings were had before Vice-Consul Zach, who then held an appointment as such from his government, and was a subordinate of the Consul-General's, but had no exequatur from the President of the United States, the proceedings had before him could not be regarded under the treaty. In answer to this, we respectfully insist for the reasons already stated, that the Court should not go behind the protest of the Consul-General, and further, that by the Vice-Consul's testimony it appears that he was authorized by the Consul-General to act in all such cases (*Printed Apostles, fol.* 168). Although under our system of jurisprudence it is generally considered that a judicial officer cannot delegate his authority, unless expressly empowered by law thereto, that rule, as we are informed, does not obtain in Prussia to the same extent; and, at all events, the Consul-General, in whose office and under whose express authority these proceedings were had, has fully adopted them, as appears from his protest, and for the reasons already stated, the District Court could not, under the treaty, inquire into the regularity

of these proceedings before the Consul. The same will apply to the criticism, that in the proceedings before the Consul the accused and the accuser were not brought face to face, witnesses were not examined under oath, and a full record was not made. Under the Prussian law these things were not required (*Printed Apostles, fols.* 174, 175), and it is of no concern to any Ameriean Court, whether these proceedings before the Consul were regular or not, under the laws of Prussia. *The party deeming himself aggreived has a full and complete remedy by appeal to the proper Prussian Court* (8 *Stat p.* 382, *Art. X.*)

The case under consideration did not, and has not been claimed to come under the only exception mentioned in the treaty where the order or tranquility of the country is disturbed, and we have not, therefore, before adverted to this exception. The exception, however, strengthens our views of the proper construction of the treaty.

It was at first strongly claimed in the District Court, and it is again claimed on this application, that Dr. Roesing as Consul-General of North Germany could not be considered a Prussian Consul. We put this question at rest by presenting to the District Court and filing in this case the certificate of the Secretary of State, showing that the Executive Department of our government recognized the Consuls of the North German Union as Consuls of each one of the soverign States (of which Prussia was one,) composing that Union, the same as if they had been commissioned by each one of such States.

Printed Apostles, fols. 389 *to* 391.

This being a political question, the action of the Executive Department is conclusive.

The question of jurisdiction raised in this case and

the proper construction of the treaty are of great importance to the shipping interests of this country and of Prussia, and the other nations with whom similar treaties exist. The obligation is of course reciprocal. If this Court should overrule the decision of the Circuit Court, should adopt the narrow construction given to the treaty by the District Judge and sanction the disregard of the Consul's action, jurisdiction and protest, Prussia and the other nations must do the same, or make it the subject of political remonstrance and action which might lead to serious complications. The action of the District Court does in fact construe away and practically abrogate that clause of the treaty. For if the mere allegation in a libel, as in this case, that the seaman has been discharged, can bring upon the ship and its master the expensive, troublesome and serious consequences of a litigation like this, and that without the ability even to recover a cent of costs from the complaining seaman, who invariably sues *in forma pauperis*, the treaty becomes an illusion. It is a notorious fact, that through the influence of runners and such like, in the harbor of New York City, foreign seamen are constantly inveigled to leave their ships in order to get the much higher wages paid on board American ships, and it would be a very easy matter for the foreign sailor, who thus intends to break his contract, to do what the seamen did in this case, make trouble with his captain, then claim that he has been maltreated, and that his contract was thereby ended, following it up by an expensive suit *in rem*. It was to avoid this and other hardships that that clause has been placed in these treaties. The Prussian government at least considers the proper interpretation and faithful execution of this clause of such importance, that upon the application of the claimant below, after the adverse decision in the District Court, it authorized

its Consul-General to prosecute the appeal to the Circuit Court, and now virtually appears in this Court to resist the application for a *mandamus*, and to insist that the construction which its Consul-General has placed upon the treaty, and which was sanctioned by the decision of the Circuit Judge is correct, and should be adhered to in this Court.

III.

But the counsel for the applicants' claims that this treaty is unconstitutional, because it strips the Courts of the United States of the admiralty juirisdiction conferred on them by the Constitution of the United States.

The same point was made by the learned counsel in his argument before the Circuit Judge, but was evidently not considered by the latter of sufficient gravity to be considered in his opinion; and, indeed, we fail to see how such a question can be seriously entertained.

The Constitution of the United States was made by and for the people of the United States, and not for the subjects of Prussia, or the people of any other country If this treaty had attempted to confer upon the Prussian Consul or Courts power to decide questions involving the rights of citizens of the United States, it might be claimed that it would be in violation of the Constitution. But how can a Prussian subject not a resident even of the United States—how can these applicants invoke the Constitution of the United States against the effect of a treaty made by their sovereign with our government, and insist that *they* have a constitutional right, higher than that treaty, to sue another Prussian subject or thing in the courts of this country, instead of being remanded to the proper tribunals of their own country ?

The maritime jurisdiction sometimes exercised by our courts in maritime contracts between foreigners, has never been considered compulsory ; it has always been exercised *ex gratia.* The refusal to entertain it in a given case has always rested in the sound discretion of the court, and can never be considered a violation of a constitutional right.

The same constitution which, by providing that the judicial power shall extend to all cases of admiralty and maritime jurisdiction, has given to certain courts the constructive power of entertaining, in their discretion, maritime disputes between foreigners, has also vested the treaty-making power in the President and Senate, and has expressly provided besides, that " this constitution and the laws of the United States made in pursuance thereof, *and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land.*" This treaty, then, which certainly cannot be claimed to exceed the proper bounds of an ordinary compact between nations, and which simply, and very properly, refers the citizens of the United States to their own proper tribunals, and the subjects of Prussia to their tribunals, is, by the very terms of our Constitution, a part of the supreme law of our land, and should be obeyed as such. *Sapienti sat!*

EDWARD SALOMON,

Of Counsel for the Appellants in the Circuit Court.